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MONTANA JUSTICE PROJECT

STATE DOCUMENTS

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COURTS REPORT

Task Force Report to the Council on
Criminal Justice Standards and Goals



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THANK YOU, STAN!

THE PAGES OF THIS REPORT HAVE BEEN MADE MORE INTERESTING BY THE ADDITION OF ILLUSTRATIONS DRAWN BY A DISTINGUISHED MONTANAN, MR. STAN LYNDE OF RED LODGE. HE HAS BROUGHT MUCH CREDIT TO HIS STATE THROUGH HIS WORK, WHICH IS UNIQUE IN ITS USE OF A FRONTIER MONTANA SETTING TO MAKE IMPORTANT SOCIAL COMMENT ON ISSUES OF THIS DAY. THE MONTANA JUSTICE PROJECT IS DEEPLY GRATEFUL TO MR. LYNDE AND TO THE CHICAGO TRIBUNE - N.Y. NEWS SYNDICATE, INC., FOR THEIR INTEREST IN IMPROVING OUR STATE'S CRIMINAL JUSTICE SYSTEM AND FOR THEIR PERMISSION TO USE CHARACTERS FROM THE COMIC STRIP RICK O'SHAY. COPYRIGHT 1976. ALL RIGHTS RESERVED.

STAFF NOTE

To briefly acquaint you with the organization of the Montana Justice Project the following digest is provided:

Governor Thomas L. Judge appointed the Montana Council on Criminal Justice Standards and Goals to adopt a set of standards and goals for the improvement of Montana's criminal justice system in October, 1974. Five task forces (Law Enforcement, Courts, Corrections, Information Systems and Community Crime Prevention) were set up by the Council to research and draft standards and goals for review and adoption by the council. In reading through this report, you will notice the words "ADOPTED", "AMENDED" or "REJECTED" in use throughout. These words are descriptive of the action taken by the council on the proposed task force standards. Only those stamped "adopted" are official standards and goals for the state of Montana.

In cases where only minor wording changes were made for clarification, etc., said changes were incorporated into the task force standard with the explanation of the change stated under "Council Action."

In cases where major substantive revisions were needed, or where standards were rejected due to conflicts, unacceptable wording, etc., the council rewrote the standard to keep its primary intent and inserted it into the task force report at the appropriate point.

You will find these rewritten standards on different colored pages in this report. In these instances the original task force standard was kept intact so that you may note the differences.

We hope that you will find this report a valuable resource for the improvement of Montana's criminal justice system and would urge you to become familiar with the other four task force reports and in particular the council's report to the governor.

Brinton B. Markle

July, 1976

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PREFACE

When this country was founded it was done so on the premise that all men are endowed with certain inalienable rights and that it is the primary responsibility of government to preserve and protect those rights. This premise in fact, was the keystone of the establishing documents, the Constitution and the Declaration of Independence. Throughout our two hundred years of existence we have maintained that philosophy using it as a framework around which the majority of our law has been developed. Unfortunately, it is a philosophy which is becoming more and more difficult to uphold. The country has grown enormously since its founding and our society has become vastly more complex. The rights of individuals are now so intertwined with those of others that just determining where one leaves off and the other begins is a very difficult task.

The judicial branch, whose task that is, has been forced to develop a system which, though effective, is complex and time consuming -- particularly so when criminal matters are involved. Concurrent with that development we have experienced an upward spiraling crime rate. The upshot of the whole thing being an increase in the number of cases before the courts and an increase in the length of time required for the final resolution of each. Unfortunately, the capacity of the court system did not increase correspondingly. It has steadily become overloaded till it now nears the point where it can no longer function effectively.

This problem alone is serious enough to warrant immediate attention but the court system faces another one as great: a general decline in trust and faith in the system by the public. Many people feel that, as the concern for the rights of the accused has grown, the courts have forgotten or neglected the rights of the victim and of society. Having insufficient knowledge of law and the way the system must operate and being emotionally involved, they have seen things which appear at the least to be unjust, and at worst mockeries of justice. (The sad part is, in small part they are correct. The courts have concentrated their attention on the accused -- so much so that the rights of other members of society have suffered.) Coupled with this, are recent events in the country which have created a general disaffection and distrust of public officials and politicians and this, to a degree, includes those involved in the criminal justice process.

A great deal of the responsibility for these problems -- the overload and the decline in public trust and confidence -- must be assumed by the court system itself. By its nature, it is conservative and slow to adopt new ideas and methods of operation. There have been few serious attempts to keep the public informed of how and why the court acts as it does. Additionally, the treatment of those who become involved in the process, other than the accused, is frequently inconsiderate and often callous; and there has been the over-emphasis on the rights of the accused and the guilty.

Since the court system must assume some responsibility for the problems it now faces, it must also assume the responsibility for alleviating them. The court has the duty to ensure justice and must deal with anything which impedes it, particularly when those impediments are of and within the court system itself.

To relieve the burden on the court dockets, old processes and procedures must be streamlined with the redundant and outdated eliminated and new ones developed. Administration should be placed in the hands of persons specifically qualified for such duties. Facilities should be upgraded and redesigned and the personnel of the court system must be adequately trained. Sufficient funding must also be made available.

All of this will be difficult and some if it expensive but it is necessary if we wish to maintain even our present level of justice. Even more difficult and necessary will be the restoration of the public's faith in the system. To begin with, every effort should be made to keep the public fully aware of what is taking place within the system. This should be done in a variety of ways: the media, public information programs, responses to individual inquires, and information exchange mechanisms. There should also be opportunities for input into the court system. Those persons who are a part of the system should always be aware of the fact they are in the public eye and should conduct themselves accordingly.

Witnesses and jurors should be given all due consideration as far as timing of appearances, improved facilities and reimbursement for expenses and lost wages.

Victims in particular merit a great deal more consideration. We have concentrated on rehabilitation and the rights of offenders, but we have forgotten their victims. It can hardly be considered justice when an offender is afforded free counsel, rehabilitation programs, job counseling and training, while his victim suffers the consequences of the crime for the rest of his life. Other states have developed programs for victim assistance with some success and at a surprisingly reasonable cost. Such a program, as described in the separate report to the Montana Council on Criminal Justice Standards and Goals should be considered for this state.

Finally, and above all, the court system must always be acutely aware of the enormous responsibility with which it is entrusted. The laws of this nation are its foundation. They reflect and enforce its philosophy and protect its citizens. It is the duty -- the obligation of the court system to ensure the enforcement and preservation of those laws with every legitimate means at its disposal.

SCREENING

SCREENING

There are several ways by which an individual can be dropped from the criminal justice process. The least formal, and therefore most in danger of being abused is screening. Screening is the discretionary decision to stop -- prior to trial or plea -- all formal proceedings against a person who has become involved in the criminal justice system. It is practiced continuously. (Of the adults apprehended for index crimes in 1965, only about 40% were formally charged).¹ Law enforcement officers don't arrest everyone they have reason to believe has committed a crime. They determine if there is probable cause to make an arrest and if not will normally not do so. In some cases, when they could get a conviction, rather than make an arrest, they will make an on-the-spot "adjustment". For instance, a juvenile caught with beer may be told to pour it out and get home rather than be charged with possession.

The same holds true for the prosecutor. If he has a case he knows can't be won, he probably will not pursue it. Or, if he could convict, but there seems good reason for not doing so, he may not prosecute.

This screening is a necessary part of the criminal justice process. It reduces wasted time, energy, and money and helps to ensure the meting out of justice rather than simple

¹ Presidents Commission on Law Enforcement and Administration of Justice "The Challenge of Crime in a Free Society" p. 262 (1967).

retribution. It's a problem in that it is a low visibility process. This creates a danger that the interests of society will not be served as effectively as possible. Also, lack of well-defined screening criteria may result in erroneous decisions, and lack of procedures may lead to haphazard application of the criteria.

The following two standards set such criteria and establish procedures for their application with the understanding that it is impossible to cover every possible circumstance and each case must be considered on its own merits.

CRITERIA FOR SCREENING

AMENDED
ADOPTEDTASK FORCE FINDINGS

We must recognize the need to halt action against some individuals who become involved in the criminal justice system. This need may arise in a particular case because there is insufficient evidence to justify further proceeding, or because--despite the availability of evidence--further proceedings would not adequately advance the interests of justice.

STANDARD 1.1

THE PROSECUTOR IS NOT OBLIGED TO PRESENT ALL CHARGES WHICH THE EVIDENCE MIGHT SUPPORT. THE PROSECUTOR MAY IN SOME CIRCUMSTANCES, AND FOR GOOD CAUSE CONSISTENT WITH THE PUBLIC INTEREST, DECLINE TO PROSECUTE, DESPITE THE POSSIBILITY THAT EVIDENCE EXISTS WHICH WOULD SUPPORT A CONVICTION. ILLUSTRATIVE OF THE FACTORS WHICH THE PROSECUTOR MAY PROPERLY CONSIDER IN EXERCISING THIS DISCRETION ARE:

1. THE PROSECUTOR'S REASONABLE DOUBT THAT THE ACCUSED IS, IN FACT, GUILTY;
2. THE EXTENT OF THE HARM CAUSED BY THE OFFENSE;
3. THE DISPROPORTION OF THE AUTHORIZED PUNISHMENT IN RELATION TO THE PARTICULAR OFFENSE OR THE OFFENDER;
4. POSSIBLE IMPROPER MOTIVES OF A COMPLAINANT;
5. PROLONGED NONENFORCEMENT OF A STATUTE, WITH COMMUNITY ACQUIESCENCE;
6. UNWILLINGNESS OF A VICTIM TO TESTIFY;
7. COOPERATION OF THE ACCUSED IN THE APPREHENSION OR CONVICTION OF OTHERS;
8. AVAILABILITY AND LIKELIHOOD OF PROSECUTION BY ANOTHER JURISDICTION;
9. INSUFFICIENT EVIDENCE TO OBTAIN A CONVICTION AND SUSTAIN IT ON APPEAL.

IN MAKING THE DECISION TO PROSECUTE, THE PROSECUTOR SHOULD GIVE NO WEIGHT TO THE PERSONAL OR POLITICAL ADVANTAGES OR DISADVANTAGES WHICH MIGHT BE INVOLVED, OR TO A DESIRE TO ENHANCE HIS RECORD OF CONVICTIONS.

IN CASES WHICH INVOLVE A SERIOUS THREAT TO THE COMMUNITY, THE PROSECUTOR SHOULD NOT BE DETERRED FROM PROSECUTION BY THE FACT THAT IN HIS JURISDICTION, JURIES HAVE TENDED TO ACQUIT PERSONS ACCUSED OF THAT PARTICULAR KIND OF CRIMINAL ACT IN QUESTION. THE

PROSECUTOR SHOULD NOT BRING OR SEEK CHARGES GREATER
IN NUMBER OR DEGREE THAN HE CAN REASONABLY SUPPORT
WITH EVIDENCE AT TRIAL.

IMPLEMENTATION

To be implemented through the individual county attorneys
offices.

CROSS REFERENCES

N.A.C. Courts Volume, pp. 17-24.

A.B.A. The Prosecution Function, pp. 92-98.

COUNCIL ACTION:

The council replaced the word "reluctance"
with "unwillingness" in sub-paragraph #6
of the standard as they felt it conveyed
a clearer meaning. The standard was then
adopted.

PROCEDURE FOR SCREENING

ADOPTED

TASK FORCE FINDINGS

The power to screen a person from the criminal justice system is a potent one. To prevent its abuse, to guide those who make the decision, and to answer any questions which may arise as to the propriety of a decision, guidelines and procedures should be developed to include, but not be limited to, the following:

STANDARD 1.2

PEACE OFFICERS, IN CONSULTATION WITH THE PROSECUTOR, SHOULD DEVELOP GUIDELINES FOR THE TAKING OF PERSONS INTO CUSTODY. THESE GUIDELINES SHOULD EMBODY THE FACTORS SET OUT IN STANDARD 1.1. AFTER A PERSON HAS BEEN TAKEN INTO CUSTODY, THE DECISION TO PROCEED WITH FORMAL PROSECUTION SHOULD REST WITH THE PROSECUTOR. NO COMPLAINT SHOULD BE FILED WITHOUT THE FORMAL APPROVAL OF THE PROSECUTOR. PROSECUTORS MAY, AT THEIR DISCRETION, PERMIT PEACE OFFICERS AND OTHER AGENCIES TO FILE DIRECTLY IN CASES INVOLVING:

1. ON-VIEW TRAFFIC AND G.V.W. CITATION;
2. FISH AND GAME CITATIONS;
3. DRIVING WHILE INTOXICATED;
4. LOCAL ORDINANCES INVOLVING CONTROL OF DOMESTIC ANIMALS;
5. ANY OTHER OFFENSE FOR WHICH CITATIONS ARE NORMALLY ISSUED, IN LIEU OF ARREST WITHIN THE PARTICULAR JURISDICTION, AND THE NORMAL PENALTY IS ONLY A SMALL FINE.

ONCE A DECISION HAS BEEN MADE TO PURSUE FORMAL PROCEEDINGS, FURTHER CONSIDERATION SHOULD BE GIVEN TO SCREENING AN ACCUSED AS ADDITIONAL INFORMATION CONCERNING THE ACCUSED AND THE CASE BECOMES AVAILABLE. THE PROSECUTOR'S OFFICE SHOULD FORMULATE WRITTEN GUIDELINES TO BE APPLIED IN SCREENING, THAT EMBODY THOSE FACTORS SET OUT IN STANDARD 1.1. WHERE POSSIBLE, SUCH GUIDELINES, AS WELL AS THE GUIDELINES PROMULGATED BY THE POLICE, SHOULD BE MORE DETAILED. THE GUIDELINES SHOULD IDENTIFY, AS SPECIFICALLY AS POSSIBLE, THOSE FACTORS THAT WILL BE CONSIDERED IN IDENTIFYING CASES IN WHICH THE ACCUSED WILL NOT BE TAKEN INTO CUSTODY OR IN WHICH FORMAL PROCEEDINGS WILL NOT BE PURSUED. THEY SHOULD BE READILY AVAILABLE TO THE PUBLIC AS WELL AS TO THOSE CHARGED WITH OFFENSES, AND THEIR ATTORNEYS. THEY SHOULD BE SUBJECTED TO PERIODIC REEVALUATION BY THE POLICE AND BY THE PROSECUTOR.

WHEN A DEFENDANT IS SCREENED AFTER BEING TAKEN INTO CUSTODY, A WRITTEN STATEMENT OF THE PROSECUTOR'S REASONS SHOULD BE PREPARED AND KEPT ON FILE IN THE PROSECUTOR'S OFFICE AND A COPY GIVEN TO THE ARRESTING LAW ENFORCEMENT DEPARTMENT TO BE KEPT IN THE CASE FILE. SCREENING PRACTICES IN A PROSECUTOR'S OFFICE SHOULD BE REVIEWED PERIODICALLY BY THE PROSECUTOR HIMSELF TO ASSURE THAT THE WRITTEN GUIDELINES ARE BEING FOLLOWED. THE DECISION TO CONTINUE FORMAL PROCEEDINGS SHOULD BE A DISCRETIONARY ONE ON THE PART OF THE PROSECUTOR AND SHOULD NOT BE SUBJECT TO JUDICIAL REVIEW, EXCEPT TO THE EXTENT THAT PRETRIAL PROCEDURES PROVIDE FOR JUDICIAL DETERMINATION OF THE SUFFICIENCY OF EVIDENCE TO SUBJECT A DEFENDANT TO TRIAL. ALLEGED FAILURE OF THE PROSECUTOR TO ADHERE TO STATED GUIDELINES OR GENERAL PRINCIPALS OF SCREENING SHOULD NOT BE THE BASIS FOR ATTACK UPON A CRIMINAL CHARGE OR CONVICTION OR A LACK THEREOF.

IMPLEMENTATION

Implementation of this standard requires a cooperative effort by both the prosecutor and the local law enforcement agencies. Original impetus should come from the prosecutor's office. No legislation is necessary.

REFERENCES

N.A.C. Standard 1.2 Courts Volume, pp. 24-26.

A.B.A. Prosecution Function 3.4, pp. 83-87.

COUNCIL ACTION: Adopted as written.

DIVERSION

DIVERSION

The basic difference between diversion and screening is that in diversion formal criminal proceedings against a person are halted on the condition or assumption that he will do something in return while in screening the process is simply halted. The diverted person may be required to participate in a rehabilitation program, reimburse the victim of his crime or, as has happened in the past, enlist in some branch of the armed forces. Since it is generally done under threat of a possible conviction for a criminal offense, it may or may not be voluntary.

Formally and informally, diversion is common in our criminal justice system. The police officer who makes a juvenile clean up a mess he made or gets a drunk to admit himself to a detox center is utilizing diversion, the same as a county attorney who uses an elaborate formal process. The NAC Courts Volume refers to two substantial diversion programs¹ and, closer to home, Montana has at least three programs -- one in Billings, one in Missoula and one in Great Falls.

There are dangers in diversion. The person has not been formally adjudicated guilty and may not, in fact, be so. It is not unreasonable to think that some innocent persons might so fear a trial and possible conviction (and expense)

¹ National Advisory Commission on Criminal Justice Standards and Goals, Courts Volume pp. 28-29 (1973).

that they would submit to diversion. Also, in Montana at least, there are a limited number of programs to which a person can be diverted. There is also the possibility that the diverting authority will deliberately misuse his power. However, being aware of these dangers makes it possible to avoid them so that the benefits of diversion can be considered.

One obvious benefit is the savings in time, energy, and money if the offender is not taken through the whole process of hearings, trial, appeal and incarceration. More important, the offender has the opportunity to rehabilitate himself and make restitution without the stigma of conviction. The victim will certainly benefit more if he is reimbursed than if the offender spends six months in the county jail; and, if the diversion program is a success, society will benefit because the offender will not repeat his offense.

These benefits are substantial and this task force recommends that, with the precautions included in the following two standards, diversion be recognized as a legitimate part of the criminal justice process and treated as such.

GENERAL CRITERIA FOR DIVERSION

ADOPTED

TASK FORCE FINDINGS

Occasionally the circumstances surrounding a criminal case may indicate a need for something other than the continuation of criminal proceedings. If a person is normally a law abiding citizen but becomes aberrant when drinking, he might be better off in one of the rehabilitation programs than in jail. If one commits a crime because of some psychological problem which could be treated, and he is willing to get that treatment, this might be a better solution.

If such alternative programs are available, in appropriate cases, the offender should be diverted into noncriminal justice programs before formal trial or conviction. This will eliminate unnecessary trial costs and afford the offender the chance for a clean record.

Such diversion is appropriate where there is substantial likelihood that conviction could be obtained, and the benefits to society from channeling an offender into an available noncriminal diversion program outweigh any harm done to society by abandoning criminal prosecution.

STANDARD 2.1

THE FOLLOWING ARE FACTORS FAVORABLE TO DIVERSION:

1. THE RELATIVE YOUTH OF THE OFFENDER.
2. THE WILLINGNESS OF THE VICTIM NOT TO HAVE CONVICTION SOUGHT.
3. ANY LIKELIHOOD THAT THE OFFENDER SUFFERS FROM A MENTAL ILLNESS OR PSYCHOLOGICAL ABNORMALITY WHICH WAS RELATED TO HIS CRIME AND FOR WHICH TREATMENT IS AVAILABLE.
4. ANY LIKELIHOOD THAT THE CRIME WAS SIGNIFICANTLY RELATED TO ANY OTHER CONDITION OR SITUATION SUCH AS UNEMPLOYMENT OR FAMILY PROBLEMS THAT WOULD BE SUBJECT TO CHANGE BY PARTICIPATION IN A DIVERSION PROGRAM.

FACTORS WHICH ARE UNFAVORABLE TO DIVERSION INCLUDE:

1. ANY HISTORY OF THE USE OF PHYSICAL VIOLENCE TOWARD OTHERS.
2. INVOLVEMENT WITH SYNDICATED CRIME.
3. A HISTORY OF ANTISOCIAL CONDUCT INDICATING THAT SUCH CONDUCT HAS BECOME AN INGRAINED PART OF THE DEFENDANT'S LIFESTYLE AND WOULD BE PARTICULARLY RESISTANT TO CHANGE.
4. ANY SPECIAL NEED TO PURSUE CRIMINAL PROSECUTION AS A MEANS OF DISCOURAGING OTHERS FROM COMMITTING SIMILAR OFFENSES.

ANOTHER FACTOR TO BE CONSIDERED IN EVALUATING THE COST TO SOCIETY IS THAT THE LIMITED CONTACT A DIVERTED OFFENDER HAS WITH THE CRIMINAL JUSTICE SYSTEM MAY BRING ABOUT THE DESIRED DETERRENT EFFECT.

IMPLEMENTATION

Current laws pertaining to prosecutorial discretion do not specifically cover diversion. This should be changed and all prosecutors should make themselves familiar with all available diversion resources within their communities.

REFERENCES

1. N.A.C. Courts Volume, pp. 32-38.
2. A.B.A. Prosecutor Function, pp. 90-92.

COUNCIL ACTION: Adopted as written.

ADOPTED

TASK FORCE FINDINGS

With diversion there is always the possibility that an innocent person will submit to a treatment program simply through fear of going through a trial. There is also the possibility of inadvertent or deliberate abuse of the authority to divert. As a safeguard, formal procedures and guidelines should be adopted with a system of checks and requirements to be met by the diverting authority.

STANDARD 2.2

THE APPROPRIATE AUTHORITY SHOULD MAKE THE DECISION TO DIVERT AS SOON AS ADEQUATE INFORMATION CAN BE OBTAINED.

GUIDELINES FOR MAKING DIVERSION DECISIONS SHOULD BE ESTABLISHED AND MADE PUBLIC. WHERE THE DIVERSION DECISION IS TO BE MADE BY THE PROSECUTOR'S OFFICE, THE GUIDELINES SHOULD BE PROMULGATED BY THAT OFFICE.

WHEN A DEFENDANT IS DIVERTED IN A MANNER NOT INVOLVING A DIVERSION AGREEMENT BETWEEN THE DEFENDANT AND THE PROSECUTION, A WRITTEN STATEMENT OF THE FACT OF, AND REASON FOR, THE DIVERSION SHOULD BE MADE AND RETAINED. WHEN A DEFENDANT WHO COMES UNDER A CATEGORY OF OFFENDERS FOR WHOM DIVERSION IS REGULARLY CONSIDERED IS NOT DIVERTED, A WRITTEN STATEMENT OF THE REASONS SHOULD BE RETAINED. WHERE THE DIVERSION PROGRAM INVOLVES SIGNIFICANT DEPRIVATION OF AN OFFENDER'S LIBERTY, DIVERSION SHOULD BE PERMITTED ONLY UNDER A COURT-APPROVED DIVERSION AGREEMENT PROVIDING FOR SUSPENSION OF CRIMINAL PROCEEDINGS ON THE CONDITION THAT THE DEFENDANT PARTICIPATE IN THE DIVERSION PROGRAM. PROCEDURES SHOULD BE DEVELOPED FOR THE FORMULATION OF SUCH AGREEMENTS AND THEIR APPROVAL BY THE COURT. THESE PROCEDURES SHOULD CONTAIN THE FOLLOWING FEATURES:

1. EMPHASIS SHOULD BE PLACED ON THE OFFENDER'S RIGHT TO BE REPRESENTED BY COUNSEL DURING NEGOTIATIONS FOR DIVERSION AND ENTRY AND APPROVAL OF THE AGREEMENT.
2. THE AGREEMENT SUBMITTED TO THE COURT SHOULD CONTAIN A FULL STATEMENT OF THOSE THINGS EXPECTED OF THE DEFENDANT AND THE REASON FOR DIVERTING THE DEFENDANT.
3. THE COURT SHOULD APPROVE AN OFFERED AGREEMENT ONLY IF IT WOULD BE APPROVED UNDER THE APPLICABLE CRITERIA IF IT WERE A NEGOTIATED

- PLEA OF GUILTY.
4. FOR THE DURATION OF THE AGREEMENT, THE PROSECUTOR, ON APPROVAL BY THE COURT, SHOULD HAVE DISCRETIONARY AUTHORITY TO DETERMINE WHETHER THE OFFENDER IS PERFORMING ADEQUATELY UNDER THE AGREEMENT AND, IF HE DETERMINES THAT THE OFFENDER IS NOT, TO REINSTATE THE PROSECUTION.
 5. UPON EXPIRATION OF THE AGREEMENT, THE COURT SHOULD DISMISS THE PROSECUTION AND NO FUTURE PROSECUTION BASED ON THE CONDUCT UNDERLYING THE INITIAL CHARGE SHOULD BE PERMITTED.

WHENEVER A DIVERSION DECISION IS MADE BY THE PROSECUTOR'S OFFICE, THE STAFF MEMBER MAKING IT SHOULD SPECIFY IN WRITING THE BASIS FOR THE DECISION. THESE STATEMENTS SHOULD BE COLLECTED AND SUBJECTED TO PERIODIC REVIEW BY THE PROSECUTOR'S OFFICE TO INSURE THAT DIVERSION PROGRAMS ARE OPERATING AS INTENDED. THE DECISION BY THE PROSECUTOR NOT TO DIVERT A PARTICULAR DEFENDANT SHOULD NOT BE SUBJECT TO JUDICIAL REVIEW.

IMPLEMENTATION

These guidelines and procedures should be developed by the county attorneys with input from judges and law enforcement agencies.

REFERENCES

1. N.A.C. Courts Volume, pp. 39-41.
2. A.B.A. Prosecution Function 3.8, pp. 90-92.

COUNCIL ACTION: Adopted as written.

PLEA
NEGOTIATION

PLEA NEGOTIATION

The National Advisory Commission recommended the abolition of plea bargaining, and its standards pertaining to that practice are in fact a process for phasing it out. The American Bar Association, on the other hand, supports its retention and have set up procedures and guidelines for formalization. This task force favors the A.B.A. position feeling that while plea bargaining is a practice to be discouraged, especially in the eyes of the public, there are times when it may be justified.

If a defendant is sincerely contrite, and appears unlikely to commit another violation, justice might be better served by letting him plead to a lesser charge -- with a lesser penalty. Since the correctional emphasis is on rehabilitation, it would be pointless to subject him to harsh punishment if it were apparent he already regretted his actions and was unlikely to repeat them.

Plea bargaining might also be preferable to putting the victim of a rape or a child molestation case through the trauma of a trial. Especially if the victim, or the victim's guardians, are reluctant.

It is also felt there may be occasions when plea bargaining is the only way some offenders may be brought to justice. If the case is an old one; if the victims are reluctant to testify; if some vital evidence is likely to be suppressed; any of these events may result in a substantial

weakening of a prosecutor's case, even if the defendant is known to be guilty. If that were the case, and the prosecutor felt it unlikely that he could obtain a conviction, he would be justified in allowing the defendant to plead to a lesser charge simply to ensure that at least some degree of justice would be served.

Finally, the task force came to the conclusion that there will always be plea bargaining and that it is better to have it out in the open with formal rules and safeguards than to have it under the table without them.

The task force does wish to emphasize that plea bargaining is justified only on infrequent occasions. It is not to be used simply to speed up the criminal justice process or as a convenience. It is a practice which, through misuse and misunderstanding, has done our judicial system inestimable harm in loss of public confidence and respect. It has a potential for making a travesty of the whole judicial process and on occasion has done so. Its use, therefore, must be limited; strict guidelines must be adhered to, and the process must be formalized with complete records maintained. In this way, should any questions arise as to the necessity or propriety of an agreement, sufficient information will be available to answer these questions.

The following standards outline the circumstances in which plea negotiations might be considered justifiable and the responsibilities which those negotiations entail.

CONSIDERATION OF PLEA

ADOPTED

TASK FORCE FINDINGS

This task force has chosen to accept plea negotiation and formalize it rather than attempt to abolish it. However, it is to be used only when necessary to insure that justice be done--that the interests of the public be served--rather than simply to facilitate the administration of justice. If these criteria are met, then it may be considered proper for the court to grant charge and sentence concessions to a defendant who enters a plea of guilty.

STANDARD 3.1

CONSIDERATIONS WHICH ARE APPROPRIATE IN DETERMINING IF PLEA NEGOTIATION IS JUSTIFIED INCLUDE:

1. THAT THE DEFENDANT BY HIS PLEA HAS AIDED IN ENSURING THE PROMPT AND CERTAIN APPLICATION OF CORRECTIONAL MEASURES TO HIM.
2. THAT THE DEFENDANT HAS ACKNOWLEDGED HIS GUILT AND SHOWN A WILLINGNESS TO ASSUME RESPONSIBILITY FOR HIS CONDUCT.
3. THAT THE CONCESSIONS WILL MAKE POSSIBLE ALTERNATIVE CORRECTIONAL MEASURES WHICH ARE BETTER ADAPTED TO ACHIEVING REHABILITATIVE, PROTECTIVE, DETERRENT OR OTHER PURPOSES OF CORRECTIONAL TREATMENT, OR WILL PREVENT UNDUE HARM TO THE DEFENDANT FROM THE FORM OF CONVICTION.
4. THAT THE DEFENDANT HAS MADE PUBLIC TRIAL UNNECESSARY WHEN THERE ARE GOOD REASONS FOR NOT HAVING THE CASE DEALT WITH IN A PUBLIC TRIAL.
5. THAT THE DEFENDANT HAS GIVEN OR OFFERED COOPERATION WHEN SUCH COOPERATION HAS RESULTED OR MAY RESULT IN THE SUCCESSFUL PROSECUTION OF OTHER OFFENDERS ENGAGED IN EQUALLY SERIOUS OR MORE SERIOUS CRIMINAL CONDUCT.

EACH JURISDICTION SHOULD SET A TIME LIMIT AFTER WHICH PLEA NEGOTIATIONS MAY NO LONGER BE CONDUCTED. THE SOLE PURPOSE OF THIS LIMITATION SHOULD BE TO INSURE THE MAINTENANCE OF A TRIAL DOCKET THAT LISTS ONLY CASES THAT WILL GO TO TRIAL. AFTER THE SPECIFIED TIME HAS ELAPSED, ONLY PLEAS TO THE OFFICIAL CHARGE SHOULD BE ALLOWED, EXCEPT IN UNUSUAL CIRCUMSTANCES AND WITH THE APPROVAL OF THE JUDGE AND THE PROSECUTOR.

IMPLEMENTATION

Legislation should be drawn up permitting plea negotiation, but placing restrictions on it. Procedures for its use should be spelled out with sanctions for noncompliance.

REFERENCES

1. N.A.C. Courts Volume, pp. 46-49 and 52-53.
2. A.B.A. Pleas of Guilty, pp. 36-52.

COUNCIL ACTION: Adopted as written.

RESPONSIBILITIES OF THE PROSECUTOR

ADOPTED

TASK FORCE FINDINGS

In cases where it appears that the interest of the public in the effective administration of criminal justice (as stated in standard 3.1) would be served, the prosecuting attorney may begin plea discussions for the purpose of reaching a plea agreement. He should engage in plea discussions only with defense counsel, except when the defendant is not eligible for, or does not desire, appointment of counsel and has not retained counsel. Similarly situated defendants should be afforded equal plea agreement opportunities.

STANDARD 3.2

THE PROSECUTING ATTORNEY, IN REACHING A PLEA AGREEMENT, MAY AGREE TO ONE OR MORE OF THE FOLLOWING, AS DICTATED BY THE CIRCUMSTANCES OF THE INDIVIDUAL CASE:

1. TO MAKE, OR NOT TO OPPOSE, FAVORABLE RECOMMENDATIONS AS TO THE SENTENCE WHICH SHOULD BE IMPOSED IF THE DEFENDANT ENTERS A PLEA OF GUILTY;
2. TO SEEK, OR NOT TO OPPOSE, DISMISSAL OF THE OFFENSE CHARGED IF THE DEFENDANT ENTERS A PLEA OF GUILTY TO ANOTHER OFFENSE REASONABLY RELATED TO DEFENDANTS CONDUCT; OR,
3. TO SEEK, OR NOT TO OPPOSE, DISMISSAL OF OTHER CHARGES OR POTENTIAL CHARGES AGAINST THE DEFENDANT IF THE DEFENDANT ENTERS A PLEA OF GUILTY.

IMPLEMENTATION

To be implemented through the county attorneys offices upon passage of necessary legislation as stated in standard 3.1.

CROSS REFERENCES

N.A.C. courts Volume, pp. 46-49.

A.B.A. Pleas of Guilty, pp. 60-69.

COUNCIL ACTION: Adopted as written.

RESPONSIBILITIES OF THE TRIAL JUDGE

ADOPTED

TASK FORCE FINDINGS

Judicial participation in the plea discussions can create the impression in the mind of the defendant that he would not receive a fair trial were he to go to trial before a certain judge. The risk of not going along with the disposition apparently desired by the judge may seem so great to the defendant that he will be induced to plead guilty even if innocent. Therefore, a trial judge should not participate in plea discussions until a plea agreement has been reached between prosecution and defense. At this point his participation becomes appropriate and he assumes certain responsibilities.

STANDARD 3.3

1. IF A PLEA AGREEMENT BETWEEN PROSECUTION AND DEFENSE HAS BEEN REACHED WHICH CONTEMPLATES ENTRY OF A GUILTY PLEA IN THE EXPECTATION THAT OTHER CHARGES WILL BE DROPPED OR THAT A SENTENCE RECOMMENDATION WILL BE MADE UPON REQUEST OF THE PARTIES, THE TRIAL JUDGE MAY PERMIT DISCLOSURE TO HIM OF THE AGREEMENT AND ITS REASONS. HE MAY THEN INDICATE WHETHER HE WILL CONCUR IN THE PROPOSED DISPOSITION IF THE INFORMATION IN THE PRESENTENCE REPORT IS CONSISTENT WITH THAT PRESENTED TO HIM.
2. ANY AND ALL AGREEMENTS BETWEEN PROSECUTION AND DEFENSE, AND ANY CONCURRENCE THEREIN BY THE JUDGE, SHALL BE PUT IN WRITING.
3. IF THE TRIAL JUDGE CONCURS WITH THE AGREEMENT, BUT LATER DECIDES THAT THE FINAL DISPOSITION SHOULD NOT INCLUDE THE CONCESSIONS CONTEMPLATED, HE SHALL SO ADVISE THE DEFENDANT, AND THEN CALL ON HIM TO AFFIRM OR WITHDRAW HIS PLEA OF GUILTY.
4. WHEN A PLEA OF GUILTY IS SUBMITTED OR RECEIVED AS A RESULT OF A PRIOR AGREEMENT, THE TRIAL COURT SHOULD GIVE THE AGREEMENT DUE CONSIDERATION, BUT THE JUDGE SHOULD REACH AN INDEPENDENT DECISION ON WHETHER TO GRANT CHARGE OR SENTENCE CONCESSIONS.
5. THE COURT SHOULD NOT IMPOSE UPON A DEFENDANT ANY SENTENCE IN EXCESS OF THAT WHICH WOULD BE JUSTIFIED BY ANY OF THE REHABILITATIVE, PROTECTIVE, DETERRENT OR OTHER PURPOSES OF THE CRIMINAL LAW BECAUSE THE DEFENDANT HAS CHOSEN TO

6. REQUIRE THE PROSECUTION TO PROVE HIS GUILT AT TRIAL RATHER THAN TO ENTER A PLEA OF GUILTY. UPON ENTRY OF A PLEA OF GUILTY OR AFTER CONVICTION ON A PLEA OF NOT GUILTY, THE DEFENDANT'S COUNSEL MAY REQUEST PERMISSION FOR THE DEFENDANT TO ENTER A PLEA OF GUILTY AS TO OTHER CRIMES HE HAS COMMITTED WHICH ARE WITHIN THE JURISDICTION OF COORDINATE COURTS OF THAT STATE. UPON WRITTEN APPROVAL OF THE PROSECUTING ATTORNEY OF THE GOVERNMENTAL UNIT IN WHICH THESE CRIMES ARE CHARGED OR COULD BE CHARGED, THE DEFENDANT MAY BE ALLOWED TO ENTER THE PLEA. ENTRY OF SUCH A PLEA CONSTITUTES A WAIVER OF THE FOLLOWING:
- a. VENUE, AS TO CRIMES COMMITTED IN OTHER GOVERNMENTAL UNITS OF THE STATE; AND
 - b. FORMAL CHARGE, AS TO OFFENSES NOT YET CHARGED.

IMPLEMENTATION

Legislation permitting judicial participation in plea negotiation is required.

CROSS REFERENCES

N.A.C. Courts Volume, pp. 59-63.

A.B.A. Pleas of Guilty, pp. 18-21 and 71-77.

COUNCIL ACTION: Adopted as written.

THE LITIGATED CASE



THE LITIGATED CASE

Not much more than a century ago in Montana, the length of time between the commission of a crime and the punishment was apt to be hours rather than weeks or months, as is now the case. For example, in one of Helena's first incidents of bloodshed and violence, a man named Keene killed a man, and was caught and hanged by the citizenry, all within about two hours.¹ This was not an unusual or isolated incident. The miners courts, the vigilantes and even the regular trial courts were noted for the speed with which they dispensed justice, if not the legality. As N. P. Langford cited in his Vigilante Days and Ways, there was allowed "...none of the tedious incidents of pleading, adjournment, amendment, demurrer, etc. which at law so often consume the time of litigants and put them to unnecessary expense..."²

Things were much simpler then. There were less shades of gray between black and white, laws were fewer in number and less subject to varying interpretations, and the primary issue at trial was guilt or innocence. Our society, however, has grown complex and, being a nation of laws, so have the laws governing that society. Our attitudes have too. We no longer are able or willing to accept the casual, simplistic type of justice we had when Montana was young. We now require

¹ Camobell, William C. "From the Quarries of Last Chance Gulch," Montana Record Publishing Company, Helena, 1951.

² Langford, N.P. "Vigilante Days and Ways," McClurg and Company, Chicago, 1923, p. 140.

that a defendant be proven guilty beyond a reasonable doubt and that those processes by which he is proven guilty be regulated and controlled. The result is a complicated process subject to numerous delays and with many side issues. In short, we have made an about-face. We now stress the legality of the proceedings rather than the speed.

This chapter attempts to streamline the process so that we may regain some of the speed without jeopardizing the fairness of the trial. Specifically, time limits have been set to force prompt preparation for trial by prosecution and defense, full discovery is called for by both sides to prevent "surprises", a method for dealing with preliminary issues early in the proceedings is proposed, recommendations are made for speeding up the trial itself, continuances are to be limited, and, pretrial release and the use of citations and summons in lieu of detention are emphasized.

TIME FRAME FOR PROMPT PROCESSING OF CRIMINAL CASES

AMENDED
ADOPTED

TASK FORCE FINDINGS

In Montana, most persons accused of a crime have little difficulty obtaining a speedy trial. Most courts are able to keep their criminal case calendar current. Those whose dockets become crowded usually are able to call upon other districts for temporary assistance. Even so, for administrative purposes, for the future, and to prevent the occasional mix-up, it is necessary that some time frame be established for processing criminal cases.

STANDARD 4.1TRIAL DATE IN FELONY CASES:

IF THE DEFENDANT PLEADS NOT GUILTY HE SHALL BE TRIED AS SOON AS POSSIBLE AFTER SUCH PLEA. THE TRIAL DATE SHALL BE SET, BY THE JUDGE, WITHIN 60 DAYS OF THE PLEA UNLESS GOOD CAUSE IS SHOWN BY THE PROSECUTION OR THE DEFENDANT WHY HE SHOULD NOT BE BROUGHT TO TRIAL WITHIN THAT PERIOD. THE TIME PERIOD SHALL NOT BEGIN TO RUN EARLIER THAN THE DATE OF THE NOT GUILTY PLEA.

IF A PRELIMINARY HEARING IS TO BE HELD, IT SHOULD TAKE PLACE WITHIN TWO (2) WEEKS FOLLOWING ARREST. EVIDENCE RECEIVED AT THE PRELIMINARY HEARING SHOULD BE LIMITED TO THAT WHICH IS RELEVANT TO A DETERMINATION THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A CRIME WAS COMMITTED AND THAT THE DEFENDANT COMMITTED IT.

CASES SHALL BE GIVEN PRIORITY FOR TRIAL WHERE ONE OR MORE OF THE FOLLOWING FACTORS ARE PRESENT:

1. THE DEFENDANT IS IN PRETRIAL CUSTODY;
2. THE DEFENDANT CONSTITUTES A SIGNIFICANT THREAT OF VIOLENT INJURY TO OTHERS;
3. THE DEFENDANT IS A RECIDIVIST;
4. THE DEFENDANT IS A PROFESSIONAL CRIMINAL, THAT IS, A PERSON WHO SUBSTANTIALLY DERIVES HIS LIVELIHOOD FROM ILLEGAL ACTIVITIES; OR,
5. THE DEFENDANT IS A PUBLIC OFFICIAL.

TRIAL DATE IN MISDEMEANOR CASES:

A DEFENDANT SHALL BE TRIED AS SOON AS POSSIBLE AFTER HIS ENTRY OF A NOT GUILTY PLEA. ON DEMAND,

MADE IN WRITING OR ORALLY, ON THE RECORD BY THE PROSECUTING ATTORNEY, OR THE DEFENDANT, THE DEFENDANT SHALL BE TRIED WITHIN SIXTY (60) DAYS FROM THE DATE OF THE DEMAND UNLESS GOOD CAUSE IS SHOWN BY THE PROSECUTION OR DEFENSE WHY THE DEFENDANT SHOULD NOT BE BROUGHT TO TRIAL WITHIN THAT PERIOD. THE TIME PERIOD SHALL NOT BEGIN TO RUN EARLIER THAN THE DATE OF THE NOT GUILTY PLEA. WHERE THE DEFENDANT IS IN CUSTODY, HE SHALL BE TRIED WITHIN TEN (10) DAYS OF HIS DEMAND AND IF NOT SO TRIED, HE SHALL BE RELEASED, SUBJECT TO SUCH RELEASE CONDITIONS AS MAY BE REQUIRED BY THE COURT.

PRELIMINARY HEARINGS SHOULD NOT BE AVAILABLE IN MISDEMEANOR PROSECUTIONS. MOTIONS REQUIRING TESTIMONY SHOULD BE HEARD IMMEDIATELY PRECEDING TRIAL. IF TESTIMONY WILL NOT BE REQUIRED, ARGUMENTS ON THE MOTIONS SHOULD BE HEARD IMMEDIATELY PRECEDING TRIAL. HOWEVER, SHOULD A CONTINUANCE BE REQUIRED, THE COURT SHOULD NOTIFY THE PROSECUTION AND DEFENSE THAT THE MOTIONS WILL BE HEARD ON THE SCHEDULED TRIAL DATE AND THAT TRIAL WILL BE HELD AT A SPECIFIED TIME WITHIN TEN (10) DAYS THEREAFTER.

IMPLEMENTATION

No legislation is required for the implementation of this standard. Trial judges may establish these guidelines for their courts or the Montana Supreme Court, acting under their supervisory authority, may establish such requirements. The latter would be most preferable affecting all of the state courts uniformly and simultaneously.

REFERENCES

1. N.A.C. Courts Volume, pp. 68-69.
2. A.B.A. Speedy Trial, pp.14-16.

COUNCIL ACTION:

It was felt by the council that the section "Trial Date For Misdemeanor Cases" was not practical as written and they adopted an amended version. See colored insert on next page.

COUNCIL ACTION

ADOPTED VERSION OF STANDARD 4.1

STANDARD 4.1

ADOPTED

TRIAL DATE IN FELONY CASES:

IF THE DEFENDANT PLEADS NOT GUILTY HE SHALL BE TRIED AS SOON AS POSSIBLE AFTER SUCH PLEA. THE TRIAL DATE SHALL BE SET, BY THE JUDGE, WITHIN 60 DAYS OF THE PLEA UNLESS GOOD CAUSE IS SHOWN BY THE PROSECUTION OR THE DEFENDANT WHY HE SHOULD NOT BE BROUGHT TO TRIAL WITHIN THAT PERIOD. THE TIME PERIOD SHALL NOT BEGIN TO RUN EARLIER THAN THE DATE OF THE NOT GUILTY PLEA.

IF A PRELIMINARY HEARING IS TO BE HELD, IT SHOULD TAKE PLACE WITHIN TWO (2) WEEKS FOLLOWING ARREST. EVIDENCE RECEIVED AT THE PRELIMINARY HEARING SHOULD BE LIMITED TO THAT WHICH IS RELEVANT TO A DETERMINATION THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A CRIME WAS COMMITTED AND THAT THE DEFENDANT COMMITTED IT.

CASES SHALL BE GIVEN PRIORITY FOR TRIAL WHERE ONE OR MORE OF THE FOLLOWING FACTORS ARE PRESENT:

1. THE DEFENDANT IS IN PRETRIAL CUSTODY;
2. THE DEFENDANT CONSTITUTES A SIGNIFICANT THREAT OF VIOLENT INJURY TO OTHERS;
3. THE DEFENDANT IS A RECIDIVIST;
4. THE DEFENDANT IS A PROFESSIONAL CRIMINAL; THAT IS, A PERSON WHO SUBSTANTIALLY DERIVES HIS LIVELIHOOD FROM ILLEGAL ACTIVITIES; OR,
5. THE DEFENDANT IS A PUBLIC OFFICIAL.

TRIAL DATE IN MISDEMEANOR CASES:

IF THE DEFENDANT PLEADS NOT GUILTY HE SHALL BE TRIED AS SOON AS POSSIBLE AFTER SUCH PLEA. THE TRIAL DATE SHALL BE SET, BY THE JUDGE, WITHIN 60 DAYS OF THE PLEA UNLESS GOOD CAUSE IS SHOWN BY THE PROSECUTION OR THE DEFENDANT WHY HE SHOULD NOT BE BROUGHT TO TRIAL WITHIN THAT PERIOD. THE TIME PERIOD SHALL NOT BEGIN TO RUN EARLIER THAN THE DATE OF THE NOT GUILTY PLEA. WHERE THE DEFENDANT IS IN CUSTODY, HE SHALL BE TRIED WITHIN TEN (10) DAYS OF HIS DEMAND AND IF NOT SO TRIED, HE SHALL BE RELEASED, SUBJECT TO SUCH RELEASE CONDITIONS AS MAY BE REQUIRED BY THE COURT.

PRELIMINARY HEARINGS SHOULD NOT BE AVAILABLE IN MISDEMEANOR PROSECUTIONS. MOTIONS REQUIRING TESTIMONY SHOULD BE HEARD IMMEDIATELY PRECEDING TRIAL. IF TESTIMONY WILL NOT BE REQUIRED, ARGUMENTS ON THE MOTIONS SHOULD BE HEARD IMMEDIATELY PRECEDING TRIAL. HOWEVER, SHOULD A CONTINUANCE BE REQUIRED, THE COURT SHOULD NOTIFY THE PROSECUTION AND DEFENSE THAT THE MOTIONS WILL BE HEARD ON THE SCHEDULED TRIAL DATE AND THAT TRIAL WILL BE HELD AT A SPECIFIED TIME WITHIN TEN (10) DAYS THEREAFTER.

USE OF CITATIONS IN LIEU OF DETENTION

ADOPTED

TASK FORCE FINDINGS

Most accused persons need not be detained while awaiting court appearances. Community ties plus an ingrained inclination to submit to legal authority are usually sufficient to ensure compliance with a summons or citation. For economic reasons, as well as consideration for the accused, each criminal justice jurisdiction--state or local as appropriate--should immediately develop a policy and seek enabling legislation where necessary, to use citations and summons whenever feasible.

Defining the two terms for this document;

- 1) a citation is a written order issued by a law enforcement officer requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time,
- 2) a summons is a written order issued by the court which commands a person to appear before a court at a stated time and place.

STANDARD 4.2

DEPARTMENTAL POLICIES FOR THE USE OF CITATIONS IN LIEU OF DETENTION SHOULD INCLUDE:

1. AN ENUMERATION OF MINOR OFFENSES FOR WHICH A PEACE OFFICER SHOULD BE REQUIRED TO ISSUE A CITATION IN LIEU OF DETAINING THE ACCUSED UNLESS:
 - a. THE ACCUSED FAILS TO IDENTIFY HIMSELF OR SUPPLY REQUIRED INFORMATION;
 - b. THE ACCUSED REFUSES TO SIGN THE CITATION;
 - c. THE OFFICER HAS REASON TO BELIEVE THAT THE CONTINUED LIBERTY OF THE ACCUSED CONSTITUTES AN UNREASONABLE RISK OF BODILY INJURY TO HIMSELF OR OTHERS.
 - d. DETENTION IS NECESSARY TO CARRY OUT ADDITIONAL LEGITIMATE INVESTIGATIVE ACTION.
 - e. THE ACCUSED HAS NO TIES TO THE JURISDICTION REASONABLY SUFFICIENT TO ASSURE HIS APPEARANCE, AND THERE IS A SUBSTANTIAL RISK THAT HE WILL REFUSE TO RESPOND TO THE CITATION; OR

- f. IT APPEARS THE ACCUSED HAS PREVIOUSLY FAILED TO RESPOND TO A CITATION OR A SUMMONS OR HAS VIOLATED THE CONDITIONS OF ANY PRETRIAL RELEASE PROGRAM.
- 2. A REQUIREMENT THAT A PEACE OFFICER MAKING AN ARREST AND DETAINING AN ACCUSED, RATHER THAN ISSUING A CITATION, SHOULD SPECIFY THE REASON FOR DOING SO IN WRITING. SUPERIOR OFFICERS SHOULD BE AUTHORIZED TO RE-EVALUATE A DECISION TO DETAIN AND TO ISSUE A CITATION IN LIEU OF DETENTION.

STATE LAW SHOULD INCLUDE CRIMINAL PENALTIES FOR WILLFUL FAILURE TO RESPOND TO A CITATION. STATE LAW SHOULD ALSO AUTHORIZE A LAWFUL SEARCH INCIDENT TO AN ARREST WHERE A CITATION IS ISSUED IN LIEU OF DETENTION.

IMPLEMENTATION

The policies mentioned in this standard should be established and implemented by the law enforcement agencies. Some legislative changes will be necessary for implementation of the last portion of this standard.

REFERENCES

N.A.C. Courts Volume, pp. 70-72.
A.B.A. Pretrial Release, pp. 28 and 31-42.
Montana Criminal Code of 1973, Chapter II, 94-2-101.
Revised Codes of Montana, Title 95-601.

COUNCIL ACTION: After minor amendments to clarify language, without any change in substance this standard was adopted.

USE OF SUMMONS IN LIEU OF DETENTION

TASK FORCE FINDINGS

See standard 4.2.

ADOPTED

STANDARD 4.3

STEPS SHOULD BE TAKEN TO ENCOURAGE THE USE OF A SUMMONS INSTEAD OF AN ARREST WARRANT. THESE STEPS SHOULD INCLUDE:

1. AN ENUMERATION OF MINOR OFFENSES FOR WHICH A JUDICIAL OFFICER SHOULD BE REQUIRED TO ISSUE A SUMMONS DELIVERABLE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED (DELIVER TO ADDRESSEE ONLY), OR IN PERSON, IN LIEU OF AN ARREST WARRANT UNLESS HE FINDS THAT:
 - a. THE ACCUSED HAS PREVIOUSLY WILLFULLY FAILED TO RESPOND TO A CITATION OR SUMMONS OR HAS VIOLATED THE CONDITIONS OF ANY PRETRIAL RELEASE PROGRAM.
 - b. THE ACCUSED HAS NO TIES TO THE COMMUNITY AND THERE IS A REASONABLE LIKELIHOOD THAT HE WILL FAIL TO RESPOND TO A SUMMONS.
 - c. THE WHEREABOUTS OF THE ACCUSED IS UNKNOWN OR THE ARREST WARRANT IS NECESSARY TO SUBJECT HIM TO THE JURISDICTION OF THE COURT.
 - d. ARREST AND DETENTION ARE NECESSARY TO CARRY OUT ADDITIONAL LEGITIMATE INVESTIGATIVE ACTION.
2. A REQUIREMENT THAT A JUDICIAL OFFICER ISSUING A WARRANT INSTEAD OF A SUMMONS STATE HIS REASON FOR DOING SO IN WRITING.
3. CRIMINAL PENALTIES FOR WILLFUL FAILURE TO RESPOND TO A SUMMONS.
4. THE DEVELOPMENT OF TRAINING PROGRAMS BY LAW ENFORCEMENT AGENCIES TO INSTRUCT THEIR OFFICERS IN THE NEED FOR, AND USE OF, CITATIONS AND SUMMONS.
5. THAT THE SUMMONS SHALL:
 - a. INFORM THE ACCUSED OF THE OFFENSE WITH WHICH HE IS CHARGED;
 - b. SPECIFY THE DATE, TIME, AND EXACT LOCATION OF COURT APPEARANCE IN MISDEMEANORS OR THE PRELIMINARY HEARING IN FELONIES;
 - c. ADVISE THE ACCUSED OF HIS RIGHTS APPLICABLE TO HIS ARREST AND OF THE CONSEQUENCES OF FAILING TO APPEAR.

IMPLEMENTATION

No new legislation required. This standard may be implemented by order of the supreme court or by the judicial districts.

REFERENCES

N.A.C. Courts Volume, pp. 70-72.
A.B.A. Pretrial Release, pp. 31-42.

COUNCIL ACTION: Adopted as written.

PRETRIAL RELEASE

AMENDED
ADOPTEDTASK FORCE FINDINGS

The decision as to which defendants can be safely released on a promise to reappear for trial, or which must have restrictions placed on them, or be denied pretrial release completely, is one which must be made on an individual basis. General guidelines and policies can and should be established which will assist in making those decisions and will create the additional benefit of standardizing the process throughout the state.

These policies and guidelines should also include a mechanism for dealing with those who fail to keep their pretrial release agreement. The knowledge that such a mechanism exists and is used can be a strong inducement to conform to the release conditions.

STANDARD 4.4

ADEQUATE INVESTIGATION OF DEFENDANTS' CHARACTERISTICS AND CIRCUMSTANCES SHOULD BE UNDERTAKEN TO IDENTIFY THOSE DEFENDANTS WHO CAN BE RELEASED PRIOR TO TRIAL SOLELY ON THEIR OWN PROMISE TO APPEAR FOR TRIAL. RELEASE ON THIS BASIS SHOULD BE MADE WHEREVER APPROPRIATE. IF A DEFENDANT CANNOT APPROPRIATELY BE RELEASED ON THIS BASIS, CONSIDERATION SHOULD BE GIVEN TO RELEASING HIM UNDER CERTAIN CONDITIONS, SUCH AS THE DEPOSIT OF A SUM OF MONEY TO BE FORFEITED IN THE EVENT OF NONAPPEARANCE, OR ASSUMPTION OF AN OBLIGATION TO PAY A CERTAIN SUM OF MONEY IN THE EVENT OF NONAPPEARANCE, OR THE AGREEMENT OF THIRD PERSONS TO MAINTAIN CONTACT WITH THE DEFENDANT AND TO ASSURE HIS APPEARANCE.

PARTICIPATION BY PRIVATE BAIL BOND AGENCIES IN THE PRETRIAL RELEASE PROCESS SHOULD BE ELIMINATED.

IN CERTAIN LIMITED CASES, IT MAY BE APPROPRIATE TO DENY PRETRIAL RELEASE COMPLETELY.

SUBSTANTIVE LAW SHOULD DEAL SEVERELY WITH OFFENDERS WHO FAIL TO APPEAR FOR CRIMINAL PROCEEDINGS. GUIDELINES AND POLICIES FOR THE APPREHENSION AND PROSECUTION OF SUCH INDIVIDUALS SHOULD BE ESTABLISHED TO IMPLEMENT THE SUBSTANTIVE LAW AS SET OUT IN MONTANA STATE LAW 94-7-308. THESE GUIDELINES SHOULD INCLUDE:

1. IF A DEFENDANT FAILS TO APPEAR AT ANY SCHEDULED COURT APPEARANCE, THE TRIAL COURT SHOULD

- IMMEDIATELY ISSUE A WARRANT FOR HIS ARREST FOR THE OFFENSE OF FAILING TO APPEAR AND SHOULD PROMPTLY NOTIFY THE PROSECUTOR.
2. EACH JURISDICTION SHOULD ESTABLISH AN APPREHENSION UNIT WITHIN A LAW ENFORCEMENT AGENCY TO SECURE THE ARRESTS OF DEFENDANTS WHO FAIL TO APPEAR FOR COURT APPEARANCES. THIS UNIT SHOULD BE REQUIRED TO REPORT WITHIN TWO (2) WORKING DAYS TO A TRIAL COURT WHICH HAS GIVEN NOTICE THAT A DEFENDANT HAS FAILED TO APPEAR FOR A SCHEDULED COURT APPEARANCE; THIS REPORT SHOULD DESCRIBE THE PROGRESS TOWARD ARRESTING THE DEFENDANT. THE TRIAL COURT SHOULD HAVE THE POWER TO REQUIRE FURTHER REPORTS AS NECESSARY.

IMPLEMENTATION

Implementation of this standard will require some new form of the bail system (which will require legislation), the establishment of formal policies by the judges and the co-operation of local law enforcement agencies.

In setting up the apprehension unit it should be done in such a manner that it is integrated into the officers duties rather than in addition to them.

REFERENCES

- N.A.C. Courts Volume, pp. 83-86.
A.B.A. Pretrial Release, pp. 25-28 and 48-65.

COUNCIL ACTION:

The council felt that sub-section two was more appropriate as a recommendation due to its possible impracticality in certain smaller departments. It now appears at the end of this chapter as Council Recommendation 4-A. The remainder of this standard was adopted as written.

PRESENTATION BEFORE JUDICIAL OFFICER FOLLOWING ARREST

ADOPTEDTASK FORCE FINDINGS

Any time a person is taken into custody following an arrest he should be brought before a judicial officer as soon as possible. In our country, this is considered one of our basic rights and all jurisdictions have requirements that it be done within a reasonable period. However, courts have been lax in enforcing these requirements. This task force feels that because of the rural nature of Montana and the distances involved it would be impractical to set specific time limits, but it should be relatively easy on a case-by-case basis to determine if there was unnecessary delay. Sanctions should be imposed if this were the case.

At this appearance as many of the preliminary details of the judicial process as is practical should be initiated.

STANDARD 4.5

EXCEPT WHERE HE IS RELEASED ON CITATION OR IN SOME OTHER LAWFUL MANNER, EVERY ARRESTED PERSON SHALL BE TAKEN BEFORE A JUDICIAL OFFICER WITHOUT UNNECESSARY DELAY. AT THIS APPEARANCE, THE DEFENDANT SHALL BE ADVISED ORALLY AND IN WRITING OF THE CHARGES AGAINST HIM, OF HIS CONSTITUTIONAL RIGHTS (INCLUDING THE RIGHT TO BAIL AND TO ASSISTANCE OF COUNSEL), AND OF THE DATE OF HIS TRIAL OR PRELIMINARY HEARING. IF THE DEFENDANT IS ENTITLED TO PUBLICLY-PROVIDED REPRESENTATION, ARRANGEMENTS SHOULD BE MADE AT THIS TIME. IF IT IS DETERMINED THAT PRETRIAL RELEASE IS APPROPRIATE, THE DEFENDANT SHALL THEN BE RELEASED.

IMPLEMENTATION

No new legislation is necessary. Standard may be formally implemented by order of Supreme Court.

REFERENCES

NAC Courts Volume pp. 77-82.
ABA Pretrial Release pp. 43-48.

COUNCIL ACTION: Adopted as written.

PRETRIAL DISCOVERY

ADOPTED

TASK FORCE FINDINGS

It is the opinion of the Courts Task Force that a significant number of cases can be processed administratively without sacrificing the accused's rights. This would be facilitated by full discovery on both sides, with a forum to resolve collateral issues. Liberalized discovery will also provide for a smoother trial process with less chance for either side to use "sensational" or "shock" tactics in the courtroom.

STANDARD 4.6

THE PROSECUTION SHALL DISCLOSE TO THE DEFENDANT ALL AVAILABLE EVIDENCE THAT WILL BE USED AGAINST HIM AT TRIAL. SUCH DISCLOSURE SHALL TAKE PLACE WITHIN FIVE (5) DAYS OF THE PRELIMINARY HEARING, OR THE WAIVER OF THE PRELIMINARY HEARING, OR APPREHENSION OR SERVICE OF SUMMONS FOLLOWING THE FILING OF AN INFORMATION OR INDICTMENT, WHICHEVER FORM THE INITIATION OF PROSECUTION TAKES IN THE PARTICULAR CASE. THE EVIDENCE DISCLOSED SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO THE FOLLOWING:

1. THE NAMES AND ADDRESSES OF PERSONS WHOM THE PROSECUTOR MAY CALL AS WITNESSES AT THE TRIAL;
2. WRITTEN, RECORDED OR ORAL STATEMENTS MADE BY WITNESSES WHOM THE PROSECUTOR INTENDS TO CALL AT THE TRIAL, BY THE ACCUSED, OR BY ANY CO-DEFENDANT;
3. RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS, SCIENTIFIC TESTS, AND ANY ANALYSES OF PHYSICAL EVIDENCE, AND ANY REPORT OR STATEMENTS OF EXPERTS RELATING TO SUCH EXAMINATIONS, TESTS, OR ANALYSES; AND
4. PHYSICAL EVIDENCE BELONGING TO THE DEFENDANT OR WHICH THE PROSECUTOR INTENDS TO INTRODUCE AT TRIAL.

THE PROSECUTOR SHALL DISCLOSE, AS SOON AS POSSIBLE, ANY EVIDENCE WITHIN THIS DESCRIPTION THAT BECOMES AVAILABLE AFTER INITIAL DISCLOSURE. THE PROSECUTOR ALSO SHALL DISCLOSE ANY EVIDENCE OR INFORMATION THAT MIGHT REASONABLY BE REGARDED AS POTENTIALLY VALUABLE TO THE DEFENSE, EVEN IF SUCH DISCLOSURE IS NOT OTHERWISE REQUIRED.

THE DEFENDANT SHALL DISCLOSE ANY EVIDENCE DEFENSE COUNSEL INTENDS TO INTRODUCE AT TRIAL. INTENT TO RELY ON AN ALIBI OF INSANITY OR SELF DEFENSE SHALL BE INDICATED. SUCH DISCLOSURE SHALL TAKE PLACE IMMEDIATELY FOLLOWING THE RESOLUTION OF PRETRIAL MOTIONS OR, IN THE EVENT NO SUCH MOTIONS ARE FILED, WITHIN TWENTY (20) DAYS OF THE PRELIMINARY HEARING, THE WAIVER OF THE PRELIMINARY HEARING, OR APPREHENSION OR SERVICE OF SUMMONS FOLLOWING THE FILING OF AN INFORMATION OR INDICTMENT, WHICHEVER FORM THE INITIATION OF PROSECUTION HAS TAKEN IN THE CASE. NO DISCLOSURE NEED BE MADE, HOWEVER, OF ANY STATEMENT OF THE DEFENDANT OR OF WHETHER THE DEFENDANT HIMSELF WILL TESTIFY AT TRIAL.

THE TRIAL COURT MAY AUTHORIZE EITHER SIDE TO WITHHOLD EVIDENCE SOUGHT, IF THE OTHER SIDE ESTABLISHES IN AN EX PARTE PROCEEDING THAT A SUBSTANTIAL RISK OF HARM TO THE WITNESS OR OTHERS WOULD BE CREATED BY THE DISCLOSURE AND THAT THERE IS NO FEASIBLE WAY TO ELIMINATE SUCH A RISK.

EVIDENCE, OTHER THAN THE DEFENDANT'S TESTIMONY, THAT HAS NOT BEEN DISCLOSED TO THE OPPOSING SIDE MAY BE EXCLUDED AT TRIAL UNLESS THE TRIAL JUDGE FINDS THAT THE FAILURE TO DISCLOSE IT WAS JUSTIFIABLE. THE DESIRE TO MAXIMIZE THE TACTICAL ADVANTAGE OF EITHER THE DEFENDANT OR THE PROSECUTION SHALL NOT BE REGARDED AS JUSTIFICATION UNDER ANY CIRCUMSTANCES. WHERE APPROPRIATE, A PERSON FAILING TO DISCLOSE ANY EVIDENCE THAT SHOULD BE DISCLOSED SHALL BE HELD IN CONTEMPT OF COURT.

IMPLEMENTATION

Legislation required.

REFERENCES

NAC Courts Volume pp. 89-92.
ABA Discovery and Procedure Before Trial pp. 34-78,
88-93, 97-108; Prosecution Function pp. 100-104.

COUNCIL ACTION: Adopted as written.

RESPONSIBILITIES OF THE TRIAL COURT AND OF COUNSEL

ADOPTED

TASK FORCE FINDINGS

It is important that the process of discovery be carried out in a professional and cooperative manner by all concerned. By reducing the formal processes to a minimum, a great deal of time and energy can be saved, assuring the defendant of a speedy and fair trial and the court of a current calendar. The trial court, prosecution, and defense should all take the initiative in promoting a smooth flow of information.

STANDARD 4.7

THE TRIAL COURT SHOULD, ON ITS OWN INITIATIVE, PROVIDE FOR THE EXERCISE OF DISCOVERY AUTOMATICALLY, WITHOUT THE FILING OF FORMAL REQUESTS OR SUPPORTING DOCUMENTS. THE COURT SHOULD SUPERVISE THE EXERCISE OF DISCOVERY TO THE EXTENT NECESSARY TO ENSURE THAT IT PROCEEDS PROPERLY, EXPEDITIOUSLY, AND WITH A MINIMUM OF IMPOSITION ON THE TIME AND ENERGIES OF THE COURT, COUNSEL, AND PROSPECTIVE WITNESSES. IN ANY EVENT, THE COURT SHOULD ENCOURAGE EFFECTIVE AND TIMELY DISCOVERY CONDUCTED VOLUNTARILY AND INFORMALLY BETWEEN COUNSEL.

THE COURT SHOULD TAKE THE INITIATIVE AT APPROPRIATE TIMES TO ENSURE THAT ANY LATENT PROCEDURAL OR CONSTITUTIONAL ISSUES ARE EXPOSED AND DETERMINED PRIOR TO TRIAL. TO THESE ENDS, THE COURT SHOULD PROVIDE APPROPRIATE CHECKLIST FORMS, TIME SCHEDULES AND HEARINGS; SUCH HEARINGS SHOULD BE CONSOLIDATED, IF POSSIBLE WITH ANY OTHER HEARING TO BE HELD IN THE CASE PRIOR TO THE TRIAL.

PROSECUTION AND DEFENSE COUNSEL SHOULD TAKE THE INITIATIVE AND CONDUCT REQUIRED DISCOVERY WILLINGLY AND EXPEDITIOUSLY, WITH A MINIMUM OF IMPOSITION ON THE TIME AND ENERGIES OF THE COURT, COUNSEL, AND PROSPECTIVE WITNESSES. COUNSEL SHOULD BE ASTUTE AND DILIGENT IN DEFINING ISSUES WHICH CAN MOST EFFICIENTLY BE DISPOSED OF PRIOR TO TRIAL, AND SHOULD ENGAGE IN PLEA DISCUSSIONS IN AN EFFECTIVE AND TIMELY MANNER. ONLY THROUGH THE INITIATIVE AND COOPERATION OF COUNSEL IN EFFECTING THESE STANDARDS CAN CRIMINAL CASES BE FAIRLY AND TIMELY DISPOSED OF, AS JUSTICE REQUIRES.

IMPLEMENTATION

The implementation of this standard will require the willing cooperation of the trial judge, the prosecution and the defense. Legislation or court directives can not create the attitude of professional cooperation this standard seeks.

REFERENCES

NAC Courts Volume pp. 89-94

ABA Discovery and Procedure Before Counsel pp. 48-51

COUNCIL ACTION: Adopted as written.

PRETRIAL MOTIONS AND CONFERENCE

ADOPTED

TASK FORCE FINDINGS

The preliminary issues of a criminal prosecution can take up as much time as the trial itself and frequently are of considerable significance so far as the outcome of the trial and the rights of the accused. They can also be used as delaying and diversionary tactics.

To insure that these issues are raised early in the proceedings and that none are overlooked, some sort of procedural framework is necessary with some fairly specific time limits. This framework must be one which insures that all proper matters are raised at the appropriate time and within reasonable time limits.

STANDARD 4.8

ALL PRETRIAL MOTIONS SHALL BE FILED TWENTY-ONE (21) DAYS PRIOR TO TRIAL UNLESS A SHORTER TIME IS REQUIRED BY COURT RULE. A HEARING SHALL BE HELD ON SUCH MOTIONS WITHIN FIFTEEN (15) DAYS OF THE FILING OF THE MOTIONS. THE COURT SHALL RULE ON SUCH MOTIONS WITHIN SEVENTY-TWO (72) HOURS OF THE CLOSE OF THE HEARING.

AT THIS HEARING, THE COURT MUST HEAR ALL FILED MOTIONS AND THE PARTIES AND COURT SHALL UTILIZE A CHECKLIST TO INSURE THAT ALL APPROPRIATE MOTIONS HAVE BEEN FILED AND ALL NECESSARY ISSUES RAISED. ALL ISSUES RAISED SHALL BE RESOLVED AT THIS POINT; RESERVED RULINGS ON MOTIONS SHOULD BE AVOIDED.

FAILURE TO RAISE ANY ISSUE CONCERNING THE ADMISSIBILITY OF EVIDENCE OR OTHER MATTER APPROPRIATELY RAISED BEFORE TRIAL IN ACCORDANCE WITH THIS PROCEDURE, SHOULD PRECLUDE A DEFENDANT FROM OTHERWISE RAISING THE ISSUE, UNLESS THE DEFENSE ESTABLISHES THAT THE INFORMATION ESSENTIAL TO RAISING THE ISSUE WAS NOT REASONABLY AVAILABLE AT THAT TIME.

NO CASE SHOULD PROCEED TO TRIAL UNTIL A PRETRIAL CONFERENCE HAS BEEN HELD, UNLESS THE TRIAL JUDGE DETERMINES THAT SUCH A CONFERENCE WOULD SERVE NO USEFUL PURPOSE. IF PRETRIAL MOTIONS HAVE BEEN MADE, THIS CONFERENCE SHOULD NOT BE HELD UNTIL THE ISSUES RAISED

BY THESE MOTIONS HAVE BEEN RESOLVED. AT THIS CONFERENCE, MAXIMUM EFFORTS SHOULD BE MADE TO NARROW THE ISSUES TO BE LITIGATED AT THE TRIAL.

WHERE POSSIBLE, THIS CONFERENCE SHOULD BE HELD IMMEDIATELY FOLLOWING AND AS A PART OF THE MOTION HEARING. IN ANY EVENT, IT SHOULD BE HELD WITHIN FIVE (5) DAYS OF THE MOTION HEARING.

IMPLEMENTATION

This standard may be implemented by the trial courts with no legislation required.

REFERENCES

NAC Courts Volume pp. 93-94
ABA Discovery and Procedure Before Trial pp. 48-51,
114-131; Trial Judge pp. 46-47

COUNCIL ACTION: Adopted as written.

TRIAL OF CRIMINAL CASES

ADOPTED

TASK FORCE FINDINGS

Though much of the delay in criminal proceedings is caused by pretrial procedures, a good deal of time can also be wasted during the trial. Long-winded oratory, volumes of evidence--some of it unnecessary--and the long drawn-out selection of jurors can stretch a trial out to twice its necessary length. Jurors and witnesses in particular suffer in this sort of procedure. (In addition to the taxpayers!) Being forced to take time away from work or home can frequently cause hardships. This is especially aggravating if the time spent is wasted. Montana's courts now generally manage to keep current, but this may not be so in the near future. Rising crime rates and increasing population will certainly result in increased dockets especially if the efficiency of law enforcement agencies continues to improve. Either additional judges will soon be required or some streamlining must occur. The former should be considered only after everything within reason has been done to increase the efficiency of those we now have.

STANDARD 4.9

- ALL CRIMINAL TRIALS SHOULD CONFORM TO THE FOLLOWING:
1. OPENING STATEMENTS TO THE JURY BY COUNSEL SHOULD BE LIMITED TO A CLEAR, NONARGUMENTATIVE STATEMENT OF THE EVIDENCE TO BE PRESENTED TO THE JURY.
 2. EVIDENCE ADMITTED SHOULD BE STRICTLY LIMITED TO THAT WHICH IS DIRECTLY RELEVANT AND MATERIAL TO THE ISSUES BEING LITIGATED. REPETITION SHOULD BE AVOIDED.
 3. SUMMATIONS OR CLOSING STATEMENTS BY COUNSEL SHOULD BE LIMITED TO THE ISSUES RAISED BY EVIDENCE SUBMITTED DURING TRIAL AND SHOULD BE SUBJECT TO TIME LIMITATIONS AFTER CONSULTATION WITH COUNSEL.
 4. STANDARDIZED INSTRUCTIONS SHOULD BE UTILIZED IN ALL CRIMINAL TRIALS AS FAR AS IS PRACTICABLE. REQUESTS BY COUNSEL FOR SPECIFIC INSTRUCTIONS SHOULD BE MADE AT, OR BEFORE, COMMENCEMENT OF THE TRIAL. FINAL ASSEMBLING OF INSTRUCTIONS SHOULD BE COMPLETED BY SUPPORT PERSONNEL UNDER THE COURTS DIRECTION PRIOR TO THE COMPLETION OF THE PRESENTATION OF THE EVIDENCE.
 5. THE JUDGE SHOULD INITIATE THE VOIR DIRE EXAMINATION BY IDENTIFYING THE PARTIES AND THEIR RE-

SPECTIVE COUNSEL, AND BY REFERRING TO THE CHARGE AGAINST THE ACCUSED. HE SHOULD ALSO PUT TO THE PROSPECTIVE JURORS, QUESTIONS TOUCHING THEIR QUALIFICATIONS--INCLUDING IMPARTIALITY--TO SERVE AS JURORS IN THE CASE. THE JUDGE SHOULD ALSO PERMIT SUCH ADDITIONAL QUESTIONS BY THE DEFENDANT OR HIS ATTORNEY AND THE PROSECUTOR AS HE DEEMS REASONABLE AND PROPER.

IMPLEMENTATION

This standard may be implemented by court rule, however, as Montana law now stands, the emphasis is for the prosecution and defense to conduct the examination of prospective jurors.

REFERENCES

NAC Courts Volume pp. 99-100, 103-105
ABA Trial by Jury pp. 63-67, 70-78, 110-121;
The Prosecution Function, pp. 119-122, 126-129;
Defense Function pp. 246-270, 277-282;
Trial Judge pp. 31-32, 63-64, 67-68, 73-74.

COUNCIL ACTION: Adopted as written.

THE GRAND JURY

ADOPTED

TASK FORCE FINDINGS

Though there has been talk from time to time of dispensing with the grand jury, the courts task force believes that it does have a valuable role in the criminal justice process. The broad investigatory powers of the grand jury enable it to probe into matters in far greater depth than any other agency or office. It also has the advantage of being relatively free from outside influences or political considerations. This is especially useful in the investigation of corruption of public officials - a matter of concern to most citizens.

For these reasons, as an extraordinary investigatory body, the grand jury should be retained. It should not however, as in some states, be required for the initiation of any criminal proceeding.

STANDARD 4.10

GRAND JURY INDICTMENT SHOULD NOT BE REQUIRED IN ANY CRIMINAL PROSECUTION. THE GRAND JURY SHOULD REMAIN AVAILABLE FOR INVESTIGATION AND CHARGING IN EXCEPTIONAL CASES.

IMPLEMENTATION

Standard now in effect.

REFERENCES

N.A.C. Courts Volume, pp. 74-76.

A.B.A. Discovery and Procedure Before Trial, pp. 52-78.

COUNCIL ACTION: Adopted as written.

CONTINUANCES

ADOPTED

TASK FORCE FINDINGS

Any attempt to speed up or smooth the flow of the criminal justice process must take into account continuances. Used as a tactical maneuver by an attorney, if being granted for insignificant reasons, they can be a major source of delay in the judicial process. Besides the delay, they also complicate the process, create hardships for witnesses and jurors and may result in witnesses forgetting important details or disappearing completely. The original purpose of the continuance was to afford the defendant every legitimate opportunity for a fair trial. This should continue to be the primary consideration.

STANDARD 4.11

CONTINUANCES SHOULD NOT BE GRANTED EXCEPT UPON A VERIFIED AND WRITTEN MOTION AND A SHOWING OF GOOD CAUSE.

IMPLEMENTATION

No legislation necessary. Trial judges should establish and make known specific policies for the granting of continuances in their court.

REFERENCES

N.A.C. Courts Volume, pp. 97-98.
A.B.A. Speedy Trial, p. 13 and Trial Judge, pp. 31-32.

COUNCIL ACTION: Adopted as written.

ADOPTED

COUNCIL ACTION

COUNCIL RECOMMENDATION 4-A
(formerly subsection two of Standard 4.4)

RECOMMENDATION 4-A

EACH JURISDICTION SHOULD ESTABLISH AN APPREHENSION UNIT WITHIN A LAW ENFORCEMENT AGENCY TO SECURE THE ARRESTS OF DEFENDANTS WHO FAIL TO APPEAR FOR COURT APPEARANCES. THIS UNIT SHOULD BE REQUIRED TO REPORT WITHIN TWO (2) WORKING DAYS TO A TRIAL COURT WHICH HAS GIVEN NOTICE THAT A DEFENDANT HAS FAILED TO APPEAR FOR A SCHEDULED COURT APPEARANCE; THIS REPORT SHOULD DESCRIBE THE PROGRESS TOWARD ARRESTING THE DEFENDANT. THE TRIAL COURT SHOULD HAVE THE POWER TO REQUIRE FURTHER REPORTS AS NECESSARY.

SENTENCING



CHAPTER 5 - OVERVIEW

SENTENCING

At one time in Montana sentencing was a very uncomplicated and frequently brutal matter. The options were generally limited--the vigilantes had a choice between death or banishment.¹ The miners courts relied heavily on those two with an occasional flogging and, rarely, a fine.² There were few jails and, until the prison was built, no place to hold someone for an extended length of time. The sentences were usually set by a consensus of all those who attended the trial and were of a punitive nature. The thought of rehabilitation probably rarely entered anyones mind.

Now days things are considerably different and, generally, better. The judge sets the sentence. He has a wide variety of options including non-penal treatment programs and has guidance in the form of a presentence report to help him make his decision--and rehabilitating the offender is one of the sentences' major goals.

There is, however, a thread, an underlying principle common to both the hanging tree of the vigilantes and to the rehabilitation program of today--that is that the ultimate purpose of the sentence is to protect society. This the judge must keep constantly in mind when sentencing--the protection of society. If this can be accomplished by the offenders' rehabilitation that is ideal. If it must be done by years

of incarceration that is unfortunate but it must be done.

Concurrently, consideration should also be given to the fact that the offender has probably harmed someone and thus owes a debt to that person. If at all possible, a part of the sentence should be a repayment of that debt either monetarily or in services. For further discussion of this topic see Corrections Task Force Standard 8.5 "Jail Release Programs" and Chapter 14 of this report on victim compensation.

¹ Callaway, Judge Lew L. Fragments, #4, "The Park County News".
1-8-34

² Hamilton, James McClellan, "History of Montana", Bumbord and Mort
Pub, Portland, Oregon, 1970, p. 221.

THE COURTS ROLE IN SENTENCING

ADOPTED

TASK FORCE FINDINGS

In determining a sentence, the judge must consider both the good of the community and the offender. He must, within the limits set by law, set a sentence which will satisfy and protect the community, while giving the offender ample opportunity for rehabilitation. To do this, he must have a great deal of background information on the offender, a knowledge of what is available as far as correctional and rehabilitative facilities, and sufficient latitude to set an appropriate sentence. Once that sentence is set the correctional agency should have authority over the treatment of the offender. Further consideration should be given to continuing the jurisdiction of the trial court over the offender during the sentence.

STANDARD 5.1

THE TRIAL JUDGE SHALL BE REQUIRED TO IMPOSE A SENTENCE THAT, WITHIN LIMITS IMPOSED BY STATUTE, DETERMINES THE MAXIMUM AND MINIMUM PERIOD THE DEFENDANTS LIBERTY MAY BE RESTRICTED. THE PRE-SENTENCE REPORT SHALL BE USED IN DETERMINING THAT SENTENCE. SUBJECT TO THE LIMITATIONS OUTLINED IN STANDARD 5.2, SENTENCING TO EXTENDED TERMS, OTHER AGENCIES MAY BE GIVEN THE POWER TO DETERMINE THE MANNER AND EXTENT OF INTERFERENCE WITH THE OFFENDERS LIBERTY. CONTINUING JURISDICTION IN THE TRIAL COURT OVER THE OFFENDER DURING THE SENTENCE IMPOSED IS CONSISTENT WITH THIS STANDARD.

IMPLEMENTATION

Present legislation does not require a presentence report if the court deems it unnecessary. This should be made mandatory. New legislation would be required if judges are to set minimum and maximum time to be served and if their jurisdiction were to continue during sentence.

REFERENCES

- N.A.C. Courts Volume, pp. 110-111.
A.B.A. Functions of the Trial Judge, pp. 96-97.

COUNCIL ACTION:

Adopted as written.

SENTENCING TO EXTENDED TERMS

AMENDED
ADOPTEDTASK FORCE FINDINGS

The Montana constitution states, "Laws for the punishment of crime shall be founded on the principles of reformation and prevention . . ." and it is these principles which are normally considered during imposition of sentence. However, the unwritten but deeper intent from which these two principles spring is the protection of society. That is the penultimate reason for the entire criminal justice system.

Generally this protection should be accomplished as the constitution specifies, by reforming the offender along with a system of punishment to discourage others from such actions. There are certain individuals, though, that prove themselves not to be susceptible to rehabilitation and undeterred by threat. With these persons the emphasis should be placed on protecting society by removing them from it for as long as is necessary--that is, by extended imprisonment.

STANDARD 5.2

1. THERE SHALL BE AUTHORITY FOR THE JUDICIAL IMPOSITION OF AN EXTENDED TERM OF CONFINEMENT -- WHEN THE COURT FINDS THE INCARCERATION OF THE DEFENDANT IS REQUIRED FOR THE PROTECTION OF THE PUBLIC AND THAT THE DEFENDANT IS:
 - a. A PERSISTENT FELONY OFFENDER,
 - b. A PROFESSIONAL CRIMINAL, OR
 - c. A DANGEROUS OFFENDER.
2. DEFINITION OF A PERSISTENT FELONY OFFENDER IS A PERSON 18 YEARS OF AGE, OR OVER, WHO STANDS CONVICTED OF A FELONY FOR THE THIRD TIME. AT LEAST ONE OF THE PRIOR FELONIES MUST HAVE BEEN COMMITTED WITHIN THE FIVE YEARS PRECEEDING THE COMMISSION OF THE OFFENSE FOR WHICH THE OFFENDER IS BEING SENTENCED. AT LEAST TWO OF THE THREE FELONIES SHOULD BE OFFENSES INVOLVING INFLECTION, ATTEMPTED INFLECTION OR THREATENED INFLECTION, OF SERIOUS BODILY HARM ON ANOTHER.
3. DEFINITION OF A PROFESSIONAL CRIMINAL AS A PERSON 18 YEARS OF AGE, OR OVER, WHO STANDS CONVICTED OF A FELONY THAT WAS COMMITTED AS PART OF A CONTINUING ILLEGAL BUSINESS IN WHICH HE ACTED IN CONCERT WITH OTHER PERSONS AND OCCUPIED A POSITION OF MANAGEMENT, OR WAS AN EXECUTOR OF VIOLENCE. AN OFFENDER SHOULD NOT BE FOUND TO BE A PROFESSIONAL CRIMINAL UNLESS THE CIRCUM-

- STANCES OF THE OFFENSE FOR WHICH HE STANDS CONVICTED SHOW THAT HE HAS KNOWINGLY DEVOTED HIMSELF TO CRIMINAL ACTIVITY AS A MAJOR SOURCE OF HIS LIVELIHOOD OR UNLESS IT APPEARS THAT HE HAS SUBSTANTIAL INCOME OR RESOURCES THAT DO NOT APPEAR TO BE FROM A SOURCE OTHER THAN CRIMINAL ACTIVITY.
4. DEFINITION OF A DANGEROUS OFFENDER IS A PERSON 18 YEARS OF AGE, OR OLDER, WHOSE CRIMINAL CONDUCT IS FOUND BY THE COURT TO BE CHARACTERIZED BY:
- a. A PATTERN OF REPETITIVE BEHAVIOR WHICH POSES A SERIOUS THREAT TO THE SAFETY OF OTHERS,
 - b. A PATTERN OF PERSISTENT AGGRESSIVE BEHAVIOR WITH HEEDLESS INDIFFERENCE TO THE CONSEQUENCES, OR
 - c. A PARTICULARLY HEINOUS OFFENSE INVOLVING THE THREAT OR INFLECTION OF SERIOUS BODILY INJURY.
5. THERE SHALL BE AUTHORITY FOR THE COURT TO:
- a. IMPOSE A MINIMUM SENTENCE TO BE SERVED PRIOR TO ELIGIBILITY FOR PAROLE WITHOUT OPPORTUNITY FOR GOOD TIME.
 - b. TO PERMIT THE PAROLE OF AN OFFENDER SENTENCED TO A MINIMUM TERM PRIOR TO SERVICE OF THAT MINIMUM UPON REQUEST OF THE BOARD OF PARDONS.
 - c. IN LIEU OF THE IMPOSITION OF A MINIMUM TIME TO RECOMMEND TO THE BOARD OF PAROLE AT TIME OF SENTENCING THAT THE OFFENDER NOT BE PAROLED UNTIL A GIVEN PERIOD OF TIME HAS BEEN SERVED.

IMPLEMENTATION

Legislation required.

REFERENCES

NAC Corrections Volume pp. 155-157.

COUNCIL ACTION:

In subsection #5a the council added the words "without opportunity for good time" to retain the general premise of the entire subsection #5. The standard was then adopted.

MULTIPLE SENTENCES

ADOPTED

TASK FORCE FINDINGS

It is often the case that an offender will be convicted of more than one offense or wishes to plead guilty to other crimes he has committed. In such cases the sentencing judge should have sufficient leeway to render a fair and just sentence. That is, a sentence which is not unnecessarily lengthy but which takes into account the harm done to society and the requirements of public safety.

The state legislature should authorize sentencing courts to make disposition of offenders convicted of multiple offenses as follows:

STANDARD 5.3

1. UNDER NORMAL CIRCUMSTANCES, WHEN AN OFFENDER IS CONVICTED OF MULTIPLE OFFENSES SEPARATELY PUNISHABLE, OR WHEN AN OFFENDER IS CONVICTED OF AN OFFENSE WHILE UNDER SENTENCE ON A PREVIOUS CONVICTION, THE COURT SHOULD BE AUTHORIZED TO IMPOSE CONCURRENT SENTENCES.
2. WHERE THE COURT FINDS ON SUBSTANTIAL EVIDENCE THAT THE PUBLIC SAFETY REQUIRES A LONGER SENTENCE, THE COURT SHOULD BE AUTHORIZED TO IMPOSE CONSECUTIVE SENTENCES.
3. THE SENTENCING COURT SHOULD HAVE AUTHORITY TO ALLOW A DEFENDANT TO PLEAD GUILTY TO ANY OTHER OFFENSES HE HAS COMMITTED WITHIN THE STATE, AFTER THE CONCURRENCE OF THE PROSECUTOR AND AFTER DETERMINATION THAT THE PLEA IS VOLUNTARILY MADE. THE COURT SHOULD TAKE EACH OF THE OFFENSES INTO ACCOUNT IN SETTING THE SENTENCE. THEREAFTER, THE DEFENDANT SHOULD NOT BE HELD FURTHER ACCOUNTABLE FOR THE CRIMES TO WHICH HE HAS PLED GUILTY.
4. THE SENTENCING COURT SHOULD BE AUTHORIZED TO IMPOSE A SENTENCE THAT WOULD RUN CONCURRENTLY WITH OUT-OF-STATE SENTENCES, EVEN THOUGH THE TIME WILL BE SERVED IN AN OUT-OF-STATE INSTITUTION. WHEN APPRISED OF EITHER PENDING CHARGES OR OUTSTANDING DETAINERS AGAINST THE DEFENDANT IN OTHER JURISDICTIONS, THE COURT SHOULD BE GIVEN, BY INTERSTATE AGREEMENTS, THE AUTHORITY TO ALLOW THE DEFENDANT TO PLEAD TO THOSE CHARGES AND TO BE SENTENCED, AS PROVIDED FOR IN THE CASE OF INTRASTATE CRIMINAL ACTIVITY.

IMPLEMENTATION

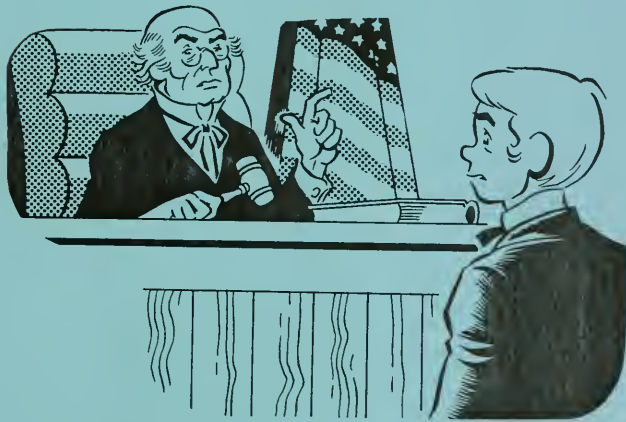
Legislation required.

REFERENCES

- N.A.C. Corrections Volume, pp. 165-167.
- A.B.A. Sentencing Alternatives and Procedures,
pp. 171-185 and 235-238.

COUNCIL ACTION: Adopted as written.

**REVIEW
OF THE
TRIAL COURT PROCEEDINGS**



REVIEW OF THE TRIAL COURT PROCEEDINGS

Our review process has grown from a simple second showing of hands in a miners' court¹ to a maze of appeals, arguments and briefs that can postpone finalization of some criminal actions for years. In our concern for the rights of the individual we have created a monster that costs huge sums of money and court time and that causes the average citizen to believe that anyone who can afford the lawyers can keep out of jail no matter how guilty.

Because even judges and those responsible for conducting the trial are fallible and because the rights of the individual are important there should be review available when someone has been found guilty of some offense. What should not be is the prevention of justice by unending legal maneuvering.

The process that is proposed in the following standards is designed to give one full and fair review of all significant details of a conviction. This includes everything from the initiation of the process through the sentencing. Such a review is sufficient to cover anything which would result in a conviction or would result in the overturning of the case. Any more review would be redundant and designed only to delay the final outcome. In addition the proposed review process provides for the unforeseen by providing further review in exceptional cases.

¹ Hamilton, James McClellan, "History of Montana", Binford and Mort Publ, Portland, Oregon, 1970, p. 330.

UNIFIED REVIEW PROCEEDING

ADOPTED

TASK FORCE FINDINGS

Because being convicted of a crime is such a serious matter, it is important that no prejudicial error be committed, or if committed, overlooked, during the defendant's trial. As a precaution, and in keeping with this country's philosophy of justice, a review process has been developed. Unfortunately, it is very fragmented, cumbersome, and slow. What must be done now is to bring order to this process. It must be unified in such a manner as to cover all aspects of trial and judgment swiftly and surely.

STANDARD 6.1

EVERY CONVICTED DEFENDANT SHOULD BE AFFORDED THE OPPORTUNITY TO OBTAIN ONE FULL AND FAIR JUDICIAL REVIEW OF HIS CONVICTION AND SENTENCE BY A TRIBUNAL OTHER THAN THAT BY WHICH HE WAS TRIED OR SENTENCED. REVIEW IN THAT PROCEEDING SHOULD EXTEND TO THE ENTIRE CASE, INCLUDING:

1. THE LEGALITY OF ALL PROCEEDINGS LEADING TO THE CONVICTION;
2. THE LEGALITY AND APPROPRIATENESS OF THE SENTENCE;
3. MATTERS THAT HAVE HERETOFORE BEEN ASSERTED IN MOTIONS FOR NEW TRIAL; AND
4. ERRORS NOT APPARENT IN THE TRIAL RECORD THAT HERETOFORE MIGHT HAVE BEEN ASSERTED IN COLLATERAL ATTACKS ON A CONVICTION OR SENTENCE.

IMPLEMENTATION

The implementation of this chapter will require extensive changes -- staff, legislation procedures and court organization. In addition each standard is dependent on the others. It is recommended that some agency or group be given the task of developing a plan for the implementation of this chapter as a whole rather than attempting to do it on a standard by standard basis.

REFERENCES

N.A.C. Courts Volume pp. 116-118;
A.B.A. Review of Sentences pp. 13-41, 50-53;
Criminal Appeals pp. 15-22, 83-91;
Post-Conviction Remedies pp. 23-25, 81-82.

COUNCIL ACTION: Adopted as written.

PROFESSIONAL STAFF

ADOPTED

TASK FORCE FINDINGS

The review process recommended here requires more assistance for the court than existing law clerks and court clerks can provide. Administrative and procedural details, initial review of papers and documents, plus some details which up to now have been left to prosecution and defense attorneys should become the concern of a professional staff. This staff should be responsible to the judge and should be concerned only with facilitating the review process.

STANDARD 6.2

THE REVIEWING COURT SHOULD HAVE A FULL TIME PROFESSIONAL STAFF OF LAWYERS, RESPONSIBLE DIRECTLY TO THE JUDGES, TO PERFORM THE FOLLOWING FUNCTIONS IN REVIEW OF CRIMINAL CASES:

1. MONITORING. THE STAFF SHOULD AFFIRMATIVELY MONITOR EACH CASE TO INSURE THAT THE COURT'S RULES ARE COMPLIED WITH, AND THAT THERE IS NO UNNECESSARY DELAY IN THE REVIEW PROCESS.
2. SHAPING THE RECORD. THE FULL TRIAL TRANSCRIPT SHOULD BE EXPEDITIOUSLY PROVIDED THE REVIEWING COURT, AND THE STAFF SHOULD TAKE ACTION TO INSURE THAT THOSE PORTIONS OF TRANSCRIPTS, TRIAL COURT PAPERS, AND OTHER MATTERS THAT ARE ESSENTIAL TO A FULL AND FAIR ADJUDICATION OF THE ISSUES ARE PUT BEFORE THE JUDGES.
3. IDENTIFICATION OF ISSUES. THE STAFF SHOULD TAKE AFFIRMATIVE STEPS TO DISCOVER ALL ARGUABLE ISSUES IN THE CASE, EVEN THOUGH NOT ASSERTED BY THE DEFENDANT AND NOT APPARENT ON THE RECORD, SO THAT ALL MATTERS THAT MIGHT BE ASSERTED LATER, AS A BASIS FOR FURTHER REVIEW, CAN BE CONSIDERED AND DECIDED IN THE INITIAL REVIEW PROCEEDING. THE FUNCTION OF THIS STAFF SHOULD BE TO SUPPLEMENT RATHER THAN REPLACE THE WORK OF ATTORNEYS REPRESENTING THE PROSECUTION AND DEFENSE IN EACH CASE.

IMPLEMENTATION

See Standard 6.1, Implementation.

REFERENCES

N.A.C. Courts Volume pp. 119-121; A.B.A. Review of Sentence pp. 48-50; Criminal Appeals pp. 60-73; Post Conviction Remedies pp. 56-59, 85-90.

COUNCIL ACTION: Adopted as written.

FLEXIBLE REVIEW PROCEDURES

ADOPTED

TASK FORCE FINDINGS

Since cases under review will range from the very simple to the complex, it should be possible to consider each according to its need. This will require the reviewing court to utilize procedures that are flexible, and can be tailored in each case by the staff and the judges to insure maximum fairness, expedition, and finality through a single review of the trial court proceeding.

STANDARD 6.3

THE REVIEW PROCEDURES SHOULD PROVIDE FOR:

1. REFERRAL BY THE REVIEWING COURT TO THE TRIAL JUDGE OF THOSE ISSUES REQUIRED IN FINDING A FACT, OR THAT THE REVIEWING COURT DEEMS APPROPRIATE FOR THE TRIAL JUDGE TO DECIDE.
2. MEANS OF IDENTIFYING AND DECIDING ALL ARGUABLE POINTS IN THE CASE, WHETHER OR NOT APPARENT ON THE RECORD, THAT HERETOFORE HAVE BEEN GROUNDS FOR A COLLATERAL ATTACK ON THE CONVICTION OR SENTENCE;
3. INTERNAL FLEXIBILITY PERMITTING THE REVIEWING COURT TO CONTROL WRITTEN BRIEFS AND ORAL ARGUMENT, INCLUDING LEEWAY TO DISPOSE OF THE CASE WITHOUT ORAL ARGUMENT OR ON ORAL ARGUMENT WITHOUT WRITTEN BRIEFS ON SOME OR ALL OF THE ISSUES;
4. AUTHORITY IN THE REVIEWING COURT, AT ITS DISCRETION, TO REQUIRE OR PERMIT THE PRESENCE OF THE DEFENDANT AT A REVIEW HEARING;
5. AUTHORITY IN THE REVIEWING COURT, FOR STATED REASONS, TO SUBSTITUTE FOR THE SENTENCE IMPOSED ANY OTHER DISPOSITION THAT WAS OPEN TO THE SENTENCING COURT, IF THE DEFENDANT HAS ASSERTED THE EXCESSIVENESS OF HIS SENTENCE AS ERROR; AND
6. THE REVIEWING COURT SHOULD BE GIVEN THE AUTHORITY TO AFFIRM A CONVICTION DESPITE THE EXISTENCE OF ERROR IF TO DO SO WOULD NOT AMOUNT TO A MISCARRIAGE OF JUSTICE. THIS POWER SHOULD BE EXERCISED MORE FREQUENTLY TO SPEED FINALITY.

IMPLEMENTATION

See implementation, Standard 6.1.

REFERENCES

N.A.C. Courts Volume pp. 122-125;
A.B.A. Review of Sentence pp. 48-54;
Post Conviction Remedies pp. 23-25, 31-39, 67-71 and 84.

COUNCIL ACTION: Adopted as written.

DISPOSITIONAL TIME IN REVIEWING COURT

ADOPTEDTASK FORCE FINDINGS

It is not uncommon in this country for an appeal to take many months to be disposed of. In some areas, a year is not unusual. The review process proposed here will speed up appeal procedures. With Montana's moderate court case load, the flexibility and increased efficiency should significantly reduce the time between imposition of sentence and final disposition.

STANDARD 6.4

IN A REVIEWING COURT FUNCTIONING UNDER FLEXIBLE PROCEDURES WITH A PROFESSIONAL STAFF, A CRIMINAL CASE SHOULD BE READY FOR INITIAL ACTION WITHIN 30 DAYS AFTER THE IMPOSITION OF SENTENCE. CASES CONTAINING ONLY INSUBSTANTIAL ISSUES SHOULD BE FINALLY DISPOSED OF WITHIN 60 DAYS OF IMPOSITION OF SENTENCE. CASES PRESENTING SUBSTANTIAL ISSUES SHOULD BE FINALLY DISPOSED OF WITHIN 90 DAYS AFTER IMPOSITION OF SENTENCE.

IMPLEMENTATION

See implementation, Standard 6.1.

REFERENCES

N.A.C. Courts Volume pp. 126-127; A.B.A. Review of Sentence pp. 35-41; Criminal Appeal pp. 91-93; Post Conviction Remedies pp. 56-57.

COUNCIL ACTION: Adopted as written.

EXCEPTIONAL CIRCUMSTANCES JUSTIFYING FURTHER REVIEW

ADOPTEDTASK FORCE FINDINGS

The proposed review process is designed to improve on the old system largely by limiting review to a single, all-encompassing proceeding. However, like planning for anything else you must always be prepared to deal with the exceptional cases. Because we are dealing with persons lives and futures, those cases which do require further review must be provided for.

STANDARD 6.5

AFTER A REVIEWING COURT HAS AFFIRMED A TRIAL COURT CONVICTION AND SENTENCE, OR AFTER EXPIRATION OF A FAIR OPPORTUNITY FOR A DEFENDANT TO OBTAIN REVIEW WITH THE AID OF COUNSEL, THE CONVICTION AND THE SENTENCE GENERALLY SHOULD BE FINAL AND NOT SUBJECT TO FURTHER JUDICIAL REVIEW IN ANY COURT, STATE OR FEDERAL. FURTHER REVIEW SHOULD BE AVAILABLE ONLY IN THE FOLLOWING LIMITED CIRCUMSTANCES:

1. AN APPELLATE COURT DETERMINES THAT FURTHER REVIEW WOULD SERVE THE PUBLIC INTEREST IN THE DEVELOPMENT OF LEGAL DOCTRINE OR IN THE MAINTENANCE OF UNIFORMITY IN THE APPLICATION OF DECISIONAL AND STATUTORY LAW;
2. THE DEFENDANT ASSERTS A CLAIM OF NEWLY DISCOVERED EVIDENCE, WHICH WAS NOT KNOWN TO HIM AND WHICH COULD NOT HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE PRIOR TO CONCLUSION OF THE UNIFIED REVIEW PROCEEDING OR THE EXPIRATION OF THE TIME FOR SEEKING REVIEW, AND WHICH, IN LIGHT OF ALL THE EVIDENCE RAISES SUBSTANTIAL DOUBT AS TO DEFENDANTS' GUILT; OR
3. THE DEFENDANT ASSERTS A CLAIM OF CONSTITUTIONAL VIOLATION WHICH, IF WELL-FOUNDED, UNDERMINES THE BASIS FOR OR THE INTEGRITY OF THE ENTIRE TRIAL OR REVIEW PROCEEDING, OR IMPAIRS THE RELIABILITY OF THE FACT-FINDING PROCESS AT THE TRIAL. CHALLENGES TO STATE COURT CONVICTIONS MADE IN THE FEDERAL COURTS SHOULD BE HEARD BY THE U.S. COURT OF APPEALS.

IMPLEMENTATION

See implementation, standard 6.1.

REFERENCES

N.A.C. Courts Volume pp. 128-131;
A.B.A. Post Conviction Remedies pp. 31-39.

COUNCIL ACTION: Adopted as written.

FURTHER REVIEW WITHIN THE SAME COURT SYSTEM:
PRIOR ADJUDICATION

ADOPTED

TASK FORCE FINDINGS

Once a matter has been reviewed within a court system there is little justification to reconsider it within that same system. A defendant is entitled to one review of all his claims. Further review within that system is not consistent with the need for finality of criminal convictions or processes.

STANDARD 6.6

IF AFTER INITIAL REVIEW, A DEFENDANT SEEKS FURTHER REVIEW IN THE COURT SYSTEM IN WHICH HE WAS CONVICTED, CLAIMING A CONSTITUTIONAL VIOLATION IN THE EXCEPTIONAL CIRCUMSTANCES DESCRIBED IN SUBPARAGRAPH 3 OF STANDARD 6.5, THE COURT SHOULD NOT ADJUDICATE THE CLAIMS IF IT HAS BEEN ADJUDICATED PREVIOUSLY ON THE MERITS BY ANY COURT OF COMPETENT JURISDICTION WITHIN THAT JUDICIAL SYSTEM.

IMPLEMENTATION

See implementation, Standard 6.1.

REFERENCES

N.A.C. Courts Volume pp. 132; A.B.A. Post Conviction Remedies pp. 85-94.

COUNCIL ACTION: Adopted as written.

FURTHER REVIEW IN STATE OR FEDERAL COURT:
PRIOR FACTUAL DETERMINATIONS AND CLAIMS NOT ASSERTED
PREVIOUSLY

ADOPTED

TASK FORCE FINDINGS

Even though the defendant asserts a claim of constitutional violation (as described in subparagraph 3 of standard 6.5) there are issues which should not be further reviewed in a state or federal court. Historical or basic facts, (i.e. The date the defendant was taken into custody, how many hours he spent in custody and similar matters) once they have been tried and reviewed in a valid court should not be subject to further review. This does not include matters which might be considered constitutional. (For example, whether a confession was voluntary). Another such instance is one in which a defendant has been afforded an opportunity to litigate his claims in the course of the trial or review but did not do so, unless, of course, he shows a justifiable reason why he did not do so. It should be emphasized that this cannot, nor is it intended to, infringe on the defendants right to one full and fair review of all his claims. It is simply to give finality to a conviction by eliminating redundant and continual review.

STANDARD 6.7

WHEN A DEFENDANT SEEKS FURTHER REVIEW IN EITHER A STATE OR A FEDERAL COURT, CLAIMING A CONSTITUTIONAL VIOLATION IN THE EXCEPTIONAL CIRCUMSTANCES DESCRIBED IN SUBPARAGRAPH 3 OF STANDARD 6.5:

1. DETERMINATIONS OF BASIC OR HISTORICAL FACTS PREVIOUSLY MADE BY EITHER A TRIAL OR REVIEWING COURT, EVIDENCED BY WRITTEN FINDINGS, SHOULD BE CONCLUSIVE, UNLESS THE DEFENDANT SHOWS THAT THERE WAS A CONSTITUTIONAL VIOLATION THAT UNDERMINED THE INTEGRITY OF THE FACTFINDING PROCESS.
2. THE COURT SHOULD NOT ADJUDICATE THE MERITS OF THE CLAIM IF IN THE TRIAL COURT OR THE REVIEW PROCEEDING IT WAS NOT ADJUDICATED BECAUSE IT WAS EXPRESSLY DISCLAIMED BY THE DEFENDANT OR HIS LAWYER, OR IT WAS NOT ASSERTED IN ACCORDANCE WITH VALID GOVERNING RULES OF PROCEDURE, UNLESS THE DEFENDANT ESTABLISHES A JUSTIFIABLE BASIS FOR NOT REGARDING HIS PRIOR ACTIONS RELATED TO THE CLAIM AS FORECLOSING FURTHER REVIEW.

IMPLEMENTATION

See implementation, standard 6.1.

REFERENCES

N.A.C. Courts Volume pp. 133-137; A.B.A. Post Conviction Remedies pp. 45-48, 85-94.

COUNCIL ACTION: Adopted as written.

STATING REASONS FOR DECISIONS

ADOPTEDTASK FORCE FINDINGS

For the defendant and for the record, the reasons for a decision should be stated by a reviewing court. It is not necessary that these statements be lengthy or in great detail. In fact, they should be brief and concise. This will limit the amount of time a judge must spend in writing them plus the expense involved in printing, processing, and storage. Brief statements also enable lawyers to peruse more in a shorter period of time and reduce the cost of their acquisition and storage.

STANDARD 6.8

A REVIEWING COURT SHOULD ALWAYS STATE ITS REASONS FOR ITS DECISIONS IN A CRIMINAL CASE. AS TO INSUBSTANTIAL ISSUES, THE STATEMENT OF REASONS SHOULD BE BRIEF AND DESIGNED ONLY TO INFORM THE DEFENDANT OF WHAT CONTENTIONS THE COURT CONSIDERED AND WHY, BY CITATION TO AUTHORITY OR OTHERWISE, IT REJECTED THEM.

IMPLEMENTATION

See implementation, Standard 6.1.

REFERENCES

N.A.C. Courts Voulume pp. 138-134.

COUNCIL ACTION: Adopted as written.

TRANSCRIPTS AND PROBLEMS OUTSIDE THE COURT

ADOPTED

TASK FORCE FINDINGS

In addition to the review standards, the Courts Task Force recommends speeding up the preparation of transcripts, and that steps be taken to identify and eliminate causes for delay outside the courts. Both can be significant in affecting the speedy and smooth flow of the review process.

RECOMMENDATION 6-A

1. IT IS RECOMMENDED THAT MAJOR EFFORTS BE MADE TOWARD DEVELOPING MEANS OF PRODUCING TRIAL TRANSCRIPTS SPEEDILY. FUNDING SHOULD BE MADE AVAILABLE PROMPTLY FOR THIS PURPOSE. IT IS FURTHER RECOMMENDED THAT, WHERE TECHNOLOGICAL INNOVATIONS IN TRANSCRIPT PRODUCTION ARE NOT EMPLOYED, FUNDS SHOULD BE PROVIDED TO EMPLOY A SUFFICIENT NUMBER OF REPORTERS AND NOTE TYPISTS TO INSURE THAT TRANSCRIPTS OF THE TESTIMONY, OR AT LEAST NECESSARY PORTIONS OF IT, ARE AVAILABLE WITHIN 30 DAYS OF THE CLOSE OF THE TRIAL.
2. IT IS RECOMMENDED THAT ONGOING STUDIES BE CONDUCTED TO IDENTIFY CAUSES OF DELAY IN REVIEW, AND THAT STEPS BE TAKEN TO ELIMINATE THOSE CAUSES AS THEY ARE UNCOVERED. IN PARTICULAR, IT IS RECOMMENDED THAT ADEQUATE PERSONNEL BE PROVIDED THE PROSECUTION AND THE DEFENSE TO ENABLE THE LAWYERS TO FUNCTION IN THE REVIEW PROCESS IN THE MANNER AND TIME CONTEMPLATED BY THE STANDARDS IN THIS CHAPTER.

IMPLEMENTATION

See implementation, Standard 6.1.

REFERENCES

N.A.C. Courts Volume pp. 140-142

COUNCIL ACTION: Adopted as written.

THE JUDICIARY



CHAPTER 7 - OVERVIEW

THE JUDICIARY

It has been over one-hundred years since Montana was governed by the "Common Law of the West"¹ and the primary prerequisites for a judge were "---native good sense" and "great modesty of demeanor".² Our criminal justice system and our laws have grown so complex since those days that even those who make their living by them rarely fully know them. Our attitudes too, have changed. Casualness towards the letter of the law has been replaced by strict adherence to it--especially as far as the rights of the accused. This means that to preside over a trial and make rulings,"just good sense" no longer suffices. A judge must have a thorough knowledge of the law and its implications to conduct a trial as we now require. He must be educated in the law and since the law is constantly changing he must continue that education.

The process by which judges are selected can no longer be a casual decision by the local citizens. As we have changed from a mining camp to a complex community so must our judicial selection process change. It should be designed to identify those who are most capable for such a position--not those who can conduct the best campaign or those who make the most popular decisions. Judicial decisions must be based on the law--what is right, not what is popular--and the judge should be free to make those decisions. Once the selection has been made steps should be taken to retain judges. That way we will benefit from the continued accumulation of their knowledge

and experience. Conversely we should also be prepared to discipline and remove judges. Being human they are subject to human failings and the wrong person in such an authoritative and powerful position would be a tragedy. The removal and discipline process should be a fair one, complex enough so that it is not initiated lightly, yet simple enough to be possible.

A judge is one of the most powerful individuals in our society. Each decision he makes has a potential for affecting the lives of many persons. It is imperative that those decisions be made knowledgeably and fairly and without external pressure. The following standards are an attempt to ensure that.

¹ Hamilton, James McClellan, "History of Montana", Binford and Mort Publ.Co., Portland, Oregon, 1970, p. 327.

² Langford, Nathaniel Pitt, Vigilante Days and Ways, A.C. McClurg and Company, Chicago, 1923, p. 209.

JUDICIAL SELECTION AND TENURE

ADOPTED

TASK FORCE FINDINGS

An elected judge has to be aware that his rulings are being scrutinized by the public and that unpopular ones may affect his reelection. Even though he probably will not let this affect his decision the pressure is still there and eventually may at least color his actions. On the other hand most people prefer to have some voice in the selection of the judiciary. A compromise is called for that will allow some participation by the citizenry but will make the selection one based on merit.

Once this selection has been made the appointment should be for life. A judge who is dependent on no one for his continued employment can make his decisions with a minimum of external pressures. The state benefits in that it retains judges who have had opportunity to accumulate years of knowledge and experience. Care should be taken, however, to provide some means for discipline or removal of judges should the need arise.

STANDARD 7.1

THE SELECTION OF JUDGES SHOULD BE BASED ON MERIT QUALIFICATION FOR JUDICIAL OFFICE. A SELECTION PROCESS SHOULD AGGRESSIVELY SEEK OUT THE BEST POTENTIAL JUDICIAL CANDIDATES THROUGH THE PARTICIPATION OF THE BENCH, THE ORGANIZED BAR, AND THE LAY PUBLIC. INITIAL APPOINTMENT SHOULD BE FOR LIFE SUBJECT TO REMOVAL FOR INCOMPETENCY OR UNFITNESS (as provided in Standard 7.3.)

IMPLEMENTATION

Since there was insufficient time for the task force to give this topic the consideration necessary, a commission should be formed to develop some method of selecting judiciary incorporating these recommendations.

REFERENCES

NAC Courts Volume pp. 147-151.

COUNCIL ACTION: Adopted as written.

JUDICIAL COMPENSATION

ADOPTED

TASK FORCE FINDINGS

In a recent survey of Montana district court judges and Montana attorneys¹ one of the factors cited by both groups as being detrimental to our court system was inadequate salaries for judges. (According to a survey by the National Center for State Courts, Montana is in a tie for last place in salaries paid judges).² If we wish to upgrade our court system we must take into account the quality of the individuals working within that system. At present, we are fortunate in that we have a qualified, competent judiciary. However, as the gap between judicial salaries and the compensation to be made in private practice widens, this may change. In order to attract and retain qualified persons, Montana judicial salaries must be increased to the point where they are a fair compensation for the work entailed. They also should be designed to increase automatically as the need arises, rather than irregularly and haphazardly as in the past.

STANDARD 7.2

JUDGES SHOULD BE COMPENSATED AT A RATE THAT ADEQUATELY REFLECTS THEIR JUDICIAL RESPONSIBILITIES. THE SALARIES AND RETIREMENT BENEFITS SHALL BE THE SAME AS THE FEDERAL JUDICIARY.

IMPLEMENTATION

Legislation required.

REFERENCES

1. Judicial District Study by Richard Hargesheimer for The Montana Legislative Council, January, 1976.
2. Quarterly Survey of Judicial Salaries in State Court Systems, Vol. 2, No. 2, September, 1975. By the National Center for State Courts, N.A.C. Courts Volume, p. 152.

COUNCIL ACTION: Adopted as written.

REMOVAL AND DISCIPLINE

AMENDED
ADOPTED

TASK FORCE FINDINGS

No screening and selection process can be one hundred percent successful. Latent personality traits, physical and mental illness, changes in habits, or inability to adjust to judicial responsibilities are difficult if not impossible to foresee. It is necessary therefore, that there be some means for the discipline or even removal of a judge. This becomes doubly necessary if judges are to be appointed for life. The disciplinary and removal mechanism must be one with sufficient authority to make and implement its decisions and with sufficient latitude to do so fairly and justly.

STANDARD 7.3

A JUDGE SHOULD BE SUBJECT TO DISCIPLINE OR REMOVAL FOR PERMANENT PHYSICAL OR MENTAL DISABILITY SERIOUSLY INTERFERING WITH THE PERFORMANCE OF JUDICIAL DUTIES, WILLFUL MISCONDUCT IN OFFICE, WILLFUL AND PERSISTENT FAILURE TO PERFORM JUDICIAL DUTIES, HABITUAL INTemperance, OR CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE. THE LEGISLATURE SHALL CREATE AND FUND JUDICIAL STANDARDS COMMISSION CONSISTING OF FIVE PERSONS AND PROVIDE FOR THE APPOINTMENT THERETO OF TWO DISTRICT JUDGES, ONE ATTORNEY, AND TWO CITIZENS WHO ARE NEITHER JUDGES NOR ATTORNEYS. THE COMMISSION SHALL INVESTIGATE COMPLAINTS, MAKE RULES IMPLEMENTING THIS SECTION, AND KEEP ITS PROCEEDINGS CONFIDENTIAL. IT MAY SUBPOENA WITNESSES AND DOCUMENTS.

SHOULD ANY MEMBER OF SAID COMMISSION CAUSE CONSISTENT DELAYS IN THE PROCEEDINGS BY FAILURE TO RESPOND OR PARTICIPATE IN MATTERS SUBMITTED TO SAID COMMISSION, HE SHALL BE SUBJECT TO REMOVAL, AND ANOTHER MAY BE APPOINTED IN HIS PLACE.

UPON RECOMMENDATION OF THE COMMISSION, THE SUPREME COURT MAY:

1. RETIRE ANY JUSTICE OR JUDGE FOR DISABILITY THAT SERIOUSLY INTERFERES WITH THE PERFORMANCE OF HIS DUTIES AND IS, OR MAY BECOME, PERMANENT; OR
2. CENSURE, SUSPEND, OR REMOVE ANY JUSTICE OR JUDGE FOR WILLFUL MISCONDUCT IN OFFICE, WILLFUL AND PERSISTENT FAILURE TO PERFORM HIS DUTIES, OR HABITUAL INTemperance.

IMPLEMENTATION

Now in effect.

REFERENCES

1972 Constitution of Montana. Art VII, Section 11,
N.A.C. Courts Volume, pp. 153-155.
A.B.A. Functions of the Trial Judge, pp. 98-102.

COUNCIL ACTION:

The council felt if the legislature decided to create a judicial standards commission, they should also provide adequate funding for it, thus the words "and fund" were added to line 8 of the first paragraph. The standard was then adopted.

JUDICIAL EDUCATION

ADOPTED

TASK FORCE FINDINGS

Our legal system, like everything else in these times, is constantly changing. Laws, attitudes, administrative techniques, correctional philosophies and programs, new technological developments - all are in a continuous state of flux. Many of these changes can directly affect the outcome of a trial and/or the sentence and so must be kept up with. We cannot expect our judges to do this simply by reading books and articles in their spare time. There is too much to learn to do so haphazardly and with too little spare time. There is a need for a thorough and ongoing program for judicial education and exchange of information. It should be a comprehensive program using a variety of methods, adequately funded and with consideration given to other commitments on judges time.

STANDARD 7.4

MONTANA SHALL CREATE AND MAINTAIN A COMPREHENSIVE PROGRAM OF CONTINUING JUDICIAL EDUCATION. PLANNING FOR THIS PROGRAM SHOULD RECOGNIZE THE EXTENSIVE COMMITMENT OF JUDGE TIME, BOTH AS FACULTY AND AS PARTICIPANTS FOR SUCH PROGRAMS, THAT WILL BE NECESSARY. FUNDS NECESSARY TO PREPARE, ADMINISTER, AND CONDUCT THE PROGRAMS AND TO PERMIT JUDGES TO ATTEND APPROPRIATE NATIONAL AND REGIONAL EDUCATIONAL PROGRAMS, SHALL BE PROVIDED. THE MONTANA PROGRAM SHALL HAVE THE FOLLOWING FEATURES:

1. ALL NEW TRIAL JUDGES, WITHIN THREE YEARS OF ASSUMING JUDICIAL OFFICE, SHALL ATTEND BOTH LOCAL AND NATIONAL ORIENTATION PROGRAMS AS WELL AS ONE OF THE NATIONAL JUDICIAL EDUCATIONAL PROGRAMS. THE LOCAL ORIENTATION PROGRAM SHALL COME IMMEDIATELY BEFORE OR AFTER THE JUDGE FIRST TAKES OFFICE. IT SHALL INCLUDE VISITS TO ALL INSTITUTIONS AND FACILITIES TO WHICH CRIMINAL OFFENDERS MAY BE SENTENCED.
2. THE FAILURE OF ANY JUDGE, WITHOUT GOOD CAUSE, TO PURSUE EDUCATIONAL PROGRAMS AS PRESCRIBED IN THIS STANDARD SHALL BE CONSIDERED BY THE JUDICIAL STANDARDS COMMISSION AS GROUNDS FOR DISCIPLINE OR REMOVAL.
3. MONTANA SHALL PREPARE A BENCH MANUAL ON PROCEDURAL LAWS, WITH FORMS, SAMPLES, RULE REQUIREMENTS AND OTHER INFORMATION THAT A JUDGE SHOULD HAVE READILY AVAILABLE. THIS SHALL

INCLUDE SENTENCING ALTERNATIVES AND INFORMATION CONCERNING CORRECTIONAL PROGRAMS AND INSTITUTIONS.

4. MONTANA SHOULD PUBLISH PERIODICALLY--AND NOT LESS THAN QUARTERLY--A NEWS LETTER WITH INFORMATION FROM THE CHIEF JUSTICE, THE COURT ADMINISTRATOR, CORRECTIONAL AUTHORITIES, AND OTHERS. THIS SHOULD INCLUDE ARTICLES OF INTEREST TO JUDGES, REFERENCES TO NEW LITERATURE IN THE JUDICIAL AND CORRECTIONAL FIELDS, AND CITATIONS OF IMPORTANT APPELLATE AND TRIAL COURT DECISIONS.
5. MONTANA SHALL ADOPT A PROGRAM OF SABBATICAL LEAVE FOR THE PURPOSE OF ENABLING JUDGES TO PURSUE STUDIES AND RESEARCH RELEVANT TO THEIR JUDICIAL DUTIES.

IMPLEMENTATION

This program should be designed and implemented by the state court administrator, under the direction of the Montana Supreme court, with recommendations from the Montana District Court Judges Association. Legislation will be necessary for the funding.

REFERENCES

N.A.C. Courts Volume, pp. 156-159.

COUNCIL ACTION: Adopted as written.

**THE
LOWER
COURTS**

SPECIAL PREFACE

The following two Chapters, 8A and 8B pertain to the one topic on which the Court Task Force was unable to reach a consensus -- the lower courts. The subject was thoroughly discussed and voted on twice. The first time (Sept. 1975) Chapter 8A was approved. The second time (March 1976) Chapter 8B was approved. Finally the decision was made that each task force member would put his signature to the one he felt most appropriate and both chapters would be submitted to the council.

Basically, the difference is, in 8A the lower courts were assimilated into a state court system, with all offenses for which there was a possible jail sentence being tried by a lawyer judge. There have been some state supreme court decisions recently requiring this and the matter is now up before the U.S. Supreme Court.

In Chapter 8B the lower court system remains pretty much the same with some upgrading. The philosophy being that it is a "court of the people" and should remain so.

Task Force Members in Favor of Chapter 8A:

1. Dusty Deschamps
2. Bill Coder
3. Winn Dowlin
4. Mike Greely
5. Dave Patterson
6. Tom Dowling
7. Catherine Pemberton
8. Vaughan Barron

Task Force Members in Favor of Chapter 8B:

1. P.E. Peres
2. Walt Hammermeister*
3. Dave Shank
4. Barbara Evans
5. LeRoy McDowell
6. Justice Harrison

* In Favor of Standard 8.1B Only

THE LOWER COURTS

Probably the most controversial recommendation made by this task force is to be found in this chapter. That recommendation is the unification of the state courts, with trial jurisdiction now in courts of limited jurisdiction placed in those unified courts. (With the exception of trials of violations where there is no possibility of incarceration). The result of this recommendation would be that our lower courts, as far as criminal matters go, would still issue warrants, conduct preliminary hearings, preside at initial appearances and serve as hearing officers for certain misdemeanors, (see Standard 8.2). They would no longer have jurisdiction over offenses for which there was a possible jail sentence.

It is not the desire or the intention of this task force to do away with the office of Justice of the Peace. These judges have been with this state since its earliest days. Stout, in his "History of Montana", says that even in the early 1860's, "---every settlement and mining camp was provided with a justice of the peace---."¹ They provided justice where there was none before and still are an integral part of our court system, while retaining the original flavor of the court of the people so important to many. They should continue.

¹ Stout, Tom, "History of Montana", American Historical Society, Chicago and New York, 1921, p. 414.

The task force does feel that all offenses which entail possible incarceration should be given equal consideration. The possible consequences of serving a jail term, whether for a felony or a misdemeanor are similar. A persons family, his job, his entire future could be affected. A child whose parent was serving a six-month jail term would probably not really care that it was a misdemeanor instead of a felony -- nor would an employer or a prospective employer. In the eyes of most people, jail is jail and the person who has served time has a stigma.

Recent supreme court decisions in other states give added weight to this recommendation. They have ruled that any trial in which a defendant can be imprisoned must be presided over by a law trained judge -- that is, one who is a lawyer. The U.S. Supreme Court is considering the matter and in an earlier ruling (*Argersinger v. Hamlin* 407 U.S. 25 (1972).) required the state to provide legal counsel even in misdemeanors if the offense carried a possible jail sentence.

If the U.S. Supreme Court does rule that a judge must be a lawyer under such circumstances then this chapter would be a logical approach to comply with the ruling. If the court does not hold this to be true, the task force still believes that the recommendation and the arguments therefore are valid and should be given serious consideration.

UNIFICATION OF THE STATE COURT SYSTEM

**AMENDED
ADOPTED**TASK FORCE FINDINGS

Accused persons, whether charged with a misdemeanor or a felony, are entitled to the same quality of justice. Conviction of either can have a severe impact upon a person's life. A jail term, whether served in the county jail for a misdemeanor, or in the Montana State Prison for a felony, can seriously affect a person, his family, and his future. A \$200 fine for a misdemeanor can be a greater punishment for one person than a \$2000 felony fine for another. It is not the seriousness of the offense which should determine the quality of the conviction process, it is the seriousness of the consequences of a conviction.

The way to ensure this equality of justice is to deal with both felonies and misdemeanors in the same court. Further, that court should be a part of a unified court system financed, administered, and supervised at the state level. This will ensure uniformity throughout the state as well as adequate funding for skilled personnel and suitable facilities.

STANDARD 8.1 A

STATE COURTS SHOULD BE ORGANIZED INTO A UNIFIED JUDICIAL SYSTEM WITH UNIFORM PROCEDURES, FINANCED BY THE STATE AND ADMINISTERED THROUGH A STATE-WIDE COURT ADMINISTRATOR OR ADMINISTRATIVE JUDGE UNDER THE SUPERVISION OF THE STATE SUPREME COURT. ALL TRIAL COURTS SHOULD BE UNIFIED INTO A SINGLE TRIAL COURT WITH GENERAL CRIMINAL JURISDICTION. TRIAL JURISDICTION NOW IN COURTS OF LIMITED JURISDICTION SHOULD BE PLACED IN THOSE UNIFIED TRIAL COURTS OF GENERAL JURISDICTION, WITH THE EXCEPTION OF THE FUNCTIONS OF A COMMITTING MAGISTRATE OR TRIALS OF VIOLATIONS WHERE THERE IS NO POSSIBILITY OF INCARCERATION UPON CONVICTION. THE STATE SUPREME COURT SHALL PROMULGATE RULES FOR THE CONDUCT OF MINOR AS WELL AS MAJOR CRIMINAL PROSECUTIONS.

ALL JUDICIAL FUNCTIONS IN THE TRIAL COURT SHOULD BE PERFORMED BY FULL-TIME JUDGES. ALL TRIAL JUDGES SHOULD POSSESS LAW DEGREES AND BE MEMBERS OF THE BAR. OTHER JUDGES SHALL BE LEGALLY TRAINED AS SET FORTH IN STANDARD 7.4.

A TRANSCRIPTION OR OTHER RECORD OF THE PRETRIAL COURT PROCEEDINGS AND THE TRIAL SHALL BE KEPT

IN ALL CRIMINAL CASES INCLUDING OPENING AND CLOSING STATEMENTS. THE APPEAL PROCEDURE SHOULD BE THE SAME FOR ALL CASES. PRETRIAL RELEASE SERVICES, PROBATION SERVICES AND OTHER REHABILITATIVE SERVICES SHOULD BE AVAILABLE IN ALL PROSECUTIONS WITHIN THE JURISDICTION OF THE UNIFIED TRIAL COURT.

IMPLEMENTATION

Extensive changes will be needed to implement this standard. Any attempt to do so should include an education program for the public as well as the judiciary and members of the bar. New legislation would be required but no constitutional changes.

REFERENCES

N.A.C. Courts Volume, pp. 164-167; Revised Codes of Montana; A.B.A. Plea of Guilty, pp. 34-36; Pretrial Release, pp. 44-48.

COUNCIL ACTION:

The only change made by the council was the insertion of the words "the functions of a committing magistrate or" in the 11th line of the first paragraph. This was done to allow non-lawyer judges the ability to incarcerate on a temporary basis, not for trial sentencing but for committing purposes such as after an arrest when no bail is available. This standard was then adopted as amended.

SUMMARY DISPOSITION OF CERTAIN MATTERS NOW TREATED
AS CRIMINAL OFFENSES**ADOPTED**TASK FORCE FINDINGS

Unification of the trial court system, with both felonies and misdemeanors being tried in the same court, could cause the courts to be tied up by routine, minor matters. To prevent this, many of these matters, especially those related to traffic violations, should be disposed of summarily. Much of the process could be carried out through the mail, making it easier for all concerned. A hearing would be made available for those desiring it. This summary disposition should be limited to minor infractions for which there is no possibility of incarceration.

STANDARD 8.2 A

ALL TRAFFIC VIOLATION CASES SHOULD BE MADE INFRAC-TIONS SUBJECT TO SUMMARY DISPOSITION, EXCEPT WHERE THERE IS A POSSIBILITY OF INCARCERATION UPON CON-VICTION. PENALTIES FOR SUCH INFRACCTIONS SHOULD BE LIMITED TO FINES; OUTRIGHT SUSPENSION OR REVOC-A-TION OF DRIVER'S LICENSE; AND COMPULSORY ATTENDANCE AT EDUCATIONAL AND TRAINING PROGRAMS, UNDER PENALTY OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE.

PROCEDURES FOR DISPOSITION OF SUCH CASES SHOULD INCLUDE THE FOLLOWING:

1. VIOLATORS SHOULD BE PERMITTED TO ENTER PLEAS BY MAIL EXCEPT FOR REPEAT VIOLATORS, OR WHERE THE INFRACTION HAS ALLEGEDLY RESULTED IN A TRAFFIC ACCIDENT.
2. NO JURY TRIAL SHOULD BE AVAILABLE.
3. A HEARING, IF DESIRED BY THE ALLEGED INFRAC-TOR, SHOULD BE HELD BEFORE A LAW-TRAINED REFEREE. THE ALLEGED INFRAC-TOR SHOULD BE ALLOWED TO BE PRESENT, TO BE REPRESENTED BY COUNSEL, AND TO PRESENT EVIDENCE AND ARGU-MENTS IN HIS OWN BEHALF. THE GOVERNMENT SHOULD BE REQUIRED TO PROVE THE COMMISSION OF THE INFRACTION BY CLEAR AND CONVINCING EV-IDENTENCE. RULES OF EVIDENCE SHOULD NOT BE APPLIED STRICTLY. CONSIDERATION SHOULD BE GIVEN, IN LIGHT OF EXPERIENCE WITH TRAFFIC MATTERS, TO SIMILAR TREATMENT OF CERTAIN NON-TRAFFIC MATTERS, SUCH AS PUBLIC DRUNKENNESS.

IMPLEMENTATION

This standard should be implemented at the same time and in conjunction with Standard 8.1. The role of the law-trained referee mentioned in item number three of this standard should be assigned to the local justice of the peace.

REFERENCES

N.A.C. Courts Volume, pp. 168-170.

COUNCIL ACTION: Adopted as written.

COURTS OF LIMITED JURISDICTION

REJECTEDTASK FORCE FINDINGS

If Montana's courts of limited jurisdiction are to be retained in their present form, as we feel they should, then they must be upgraded. Training and education, some of it mandatory, should be available on an ongoing basis, adequate facilities and resources should be provided, procedures should be standardized, and salaries should be sufficient to attract and retain qualified persons. Since much of this will require statewide coordination and will entail a great deal of time and effort, a state administrator for courts of limited jurisdiction under the state supreme court should be established.

STANDARD 8.1B

ALL JUDGES OF COURTS OF LIMITED JURISDICTION, SHALL COMPLETE AT LEAST A ONE WEEK COURSE OF JUDICIAL EDUCATION STUDY EVERY TWO YEARS, WITH MANDATORY ATTENDANCE AT ALL SESSIONS. THE FAILURE OF ANY JUDGE, WITHOUT GOOD CAUSE, TO PURSUE EDUCATIONAL PROGRAMS AS PRESCRIBED IN THIS STANDARD SHALL BE CONSIDERED AS GROUNDS FOR DISCIPLINE OR REMOVAL.

ALL COURTS OF LIMITED JURISDICTION SHALL BE PROVIDED FACILITIES FOR LEGAL TAPE RECORDING OF THE PROCEEDINGS OF ARRAIGNMENT, HEARING, EXAMINATION, AND TRIALS, TO MAKE AVAILABLE A RECORD OF SUCH PROCEEDINGS WHEN NECESSARY FOR APPEAL PURPOSES, SO THAT A NEW COMPLETE TRIAL IS NOT NECESSARY IN THE DISTRICT COURTS.

THERE SHALL BE A STATE ADMINISTRATOR FOR THE COURTS OF LIMITED JURISDICTION, TO PROVIDE INFORMATION AND PROCEDURAL MANUALS, TO COORDINATE TRAINING, AND PROVIDE A CENTRAL DOCKET REPORTING OF ALL CASES HANDLED.

ANY JUDGE OF LIMITED JURISDICTION THAT HAS A DOCKET CASE LOAD OF 1700 TO 5000 CASES PER YEAR SHALL BE A FULL TIME JUDGE. ANY AREA WHOSE COURTS OF LIMITED JURISDICTION HAVE A DOCKET CASE LOAD OF OVER 5000 CASES PER YEAR, PER COURT, SHALL PROVIDE ADDITIONAL JUDGES.

THE SALARY OF ALL FULL TIME JUDGES OF COURTS OF LIMITED JURISDICTION SHALL BE AT LEAST THE SAME AS THE SALARY OF OTHER ELECTED FULL TIME COUNTY OFFICIALS. NO JUDGE OF A COURT OF LIMITED JURISDICTION SHALL HAVE A PRIVATE PRACTICE OF LAW.

IMPLEMENTATION

The administrator referred to in this standard should be a part of the state court administrators office as proposed in Standard 9.1. The remainder of the standard may be implemented through the state supreme court.

COUNCIL ACTION: Rejected in favor of Standard 8.1A.

COURT UNIFICATION

REJECTED

TASK FORCE FINDINGS

Our court system now is a collection of separate courts rather than a system. As a consequence procedures, funding and resources vary to a considerable degree from court to court; statewide crime reduction efforts are hampered and it is doubtful that the same quality of justice is available in every jurisdiction in the state. The most practical solution to these problems is to organize the state courts into a unified system financed and administered by the state. (See Chapter 9.)

STANDARD 8.2B

STATE COURTS SHOULD BE ORGANIZED INTO A UNIFIED JUDICIAL SYSTEM WITH UNIFORM PROCEDURES, FINANCED BY THE STATE AND ADMINISTERED THROUGH A STATE-WIDE COURT ADMINISTRATOR OR ADMINISTRATIVE JUDGE UNDER THE SUPERVISION OF THE STATE SUPREME COURT. THE STATE SUPREME COURT SHALL PROMULGATE RULES FOR THE CONDUCT OF MINOR AS WELL AS MAJOR CRIMINAL PROSECUTIONS.

IMPLEMENTATION

Legislation required.

REFERENCE

N.A.C. Courts Volume pp. 164-167.

COUNCIL ACTION: Rejected in favor of Standard 8.1B.

COURT

ADMINISTRATION

There has been a growing trend in recent years to put court administration into the hands of someone specifically trained for the task. In fact 42 states now have a court administration unit and 4 more are in the planning stages.¹ The reasons for this are twofold: One, it allows the judges to spend more time on judicial matters at a time when the over load in our courts is becoming critical and, two; court administration has become a whole new field in itself. Few judges have the time or the opportunity to keep up with the developments in this field, let alone to implement them.

The influx of federal funds into the court system is in large part responsible for these developments. They have brought technological improvements, training programs, new facilities and many court related projects for crime prevention and offender rehabilitation. A court administrator must keep abreast of these, must be a grantsman to obtain them, and a data collector to determine which are needed. A judge attempting to fill this role would find that he was a full time administrator and a part time judge. Since we do wish to have these programs and our judges must devote their time to judicial matters the logical step is to assign them to someone whose primary responsibility is their development, who also could assume some of the day-to-day administrative chores of our judiciary.

¹ National Center for State Courts Survey, June 1, 1974.

Recently the Montana supreme court created the position of court administrator and filled that position. The next stage should be to make that a state funded position and expand it to the office of the state court administrator. The increased capabilities will make it possible to develop a statewide court administration program suitable for Montana. Specific recommendations for that program are included in the following standards.

STATE COURT ADMINISTRATOR

ADOPTED

TASK FORCE FINDINGS

If Montana's state court system is to be, in fact, a system, it needs a centralized administrative authority. To a certain extent, the supreme court now functions in this capacity, but its appellate duties, which take up more and more of its time, must be given priority. Meanwhile, the need for training programs, exchange of information, data flow, planning, budgeting, evaluation and making policy continues to increase. It is time that these and other administrative tasks be delegated to an administrative organization, headed by a state court administrator, under the Montana supreme court. The administrative organization should be designed to have sufficient control to be effective, yet be flexible enough to accommodate the diverse local conditions to be found in Montana.

STANDARD 9.1

AN OFFICE OF STATE COURT ADMINISTRATOR SHALL BE ESTABLISHED. THE STATE COURT ADMINISTRATOR SHALL BE SELECTED BY THE MONTANA SUPREME COURT, AND HE SHALL BE SUBJECT TO REMOVAL BY THE SAME AUTHORITY. THE STATE COURT ADMINISTRATOR, SHALL, SUBJECT TO THE MONTANA SUPREME COURT, ESTABLISH POLICIES FOR THE ADMINISTRATION OF THE STATE'S COURTS. HE ALSO SHALL ESTABLISH AND IMPLEMENT GUIDELINES FOR THE EXECUTION OF THESE POLICIES, AND FOR MONITORING AND REPORTING THEIR EXECUTION. SPECIFICALLY THE STATE COURT ADMINISTRATOR SHALL:

1. PREPARE A BUDGET FOR THE OPERATION OF THE ENTIRE COURT SYSTEM OF THE STATE AND SUBMIT IT TO THE APPROPRIATE LEGISLATIVE BODY.
2. ESTABLISH UNIFORM PERSONNEL POLICIES AND PROCEDURES GOVERNING RECRUITMENT, HIRING, REMOVAL, COMPENSATION, AND TRAINING OF ALL NONJUDICIAL EMPLOYEES OF THE COURTS.
3. DEVELOP A STATE WIDE INFORMATION SYSTEM. THIS SYSTEM SHALL INCLUDE BOTH STATISTICS AND NARRATIVE REGARDING THE OPERATION OF THE ENTIRE STATE COURT SYSTEM. AT LEAST YEARLY, THE STATE COURT ADMINISTRATOR SHALL ISSUE AN OFFICIAL REPORT TO THE PUBLIC AND THE LEGISLATURE, CONTAINING INFORMATION REGARDING THE OPERATION OF THE COURTS.
4. BE RESPONSIBLE FOR POLICIES AND GUIDELINES RELATING TO ACCOUNTING AND AUDITING, AS WELL AS PROCUREMENT AND DISBURSEMENT FOR THE ENTIRE STATE WIDE COURT SYSTEM.

5. MAINTAIN LIAISON WITH GOVERNMENT AND PRIVATE ORGANIZATIONS, LABOR AND MANAGEMENT, AND HANDLE PUBLIC RELATIONS.
6. CONTINUALLY EVALUATE THE EFFECTIVENESS OF THE COURT SYSTEM AND RECOMMEND NEEDED CHANGES.
7. UNDER THE DIRECTION OF THE SUPREME COURT, ASSIGN JUDGES ON A STATEWIDE BASIS WHEN REQUIRED.

IMPLEMENTATION

The Supreme Court has, with funds supplied by the Board of Crime Control, hired a court administrator. Legislation should be established to make this position permanent with sufficient funds to operate as indicated in this standard.

REFERENCES

N.A.C. Courts Volume, pp. 176-179

COUNCIL ACTION: Adopted as written.

PRESIDING JUDGE AND ADMINISTRATIVE POLICY OF THE
TRIAL COURT**ADOPTED**TASK FORCE FINDINGS

The establishment of a statewide administrative structure for the court system must not remove responsibility for local administrative policy from the local courts. The judge or judges of a district, using guidelines established by the state supreme court, should set policy for that district. Where there is more than one judge, one should be chosen to be the administrative authority. This will provide efficient and economical administration, and will free the other judges to attend to judicial matters. Regular meetings of the judges within a district should be scheduled so that the administrative judge may have their advice and assistance in problem solving and policy setting.

STANDARD 9.2

LOCAL ADMINISTRATIVE POLICY FOR THE OPERATION OF EACH JUDICIAL DISTRICT SHALL BE SET OUT, WITHIN GUIDELINES ESTABLISHED BY THE STATE SUPREME COURT, BY THE JUDGE OR JUDGES OF THAT DISTRICT. EACH DISTRICT CONSISTING OF MORE THAN ONE JUDGE SHOULD MEET ON A REGULAR SCHEDULE WITH AN AGENDA TO CONSIDER AND RESOLVE PROBLEMS FACING THE COURT, AND TO SET POLICY FOR THE OPERATION OF THE COURT. IN EACH JUDICIAL DISTRICT FINAL ADMINISTRATIVE AUTHORITY SHALL VEST IN A JUDGE, SELECTED BY THE SUPREME COURT ON THE BASIS OF ADMINISTRATIVE ABILITY RATHER THAN SENIORITY. THE FUNCTIONS OF THE PRESIDING JUDGE SHALL BE CONSISTENT WITH STATEWIDE GUIDELINES AND SHALL INCLUDE THE FOLLOWING:

1. PERSONNEL MATTERS: HE SHALL HAVE CONTROL OVER RECRUITMENT, REMOVAL, COMPENSATION, AND TRAINING OF NONJUDICIAL EMPLOYEES OF THE COURT. HE SHALL PREPARE AND SUBMIT TO THE COURT FOR APPROVAL, RULES AND REGULATIONS GOVERNING PERSONNEL MATTERS TO INSURE THAT EMPLOYEES ARE RECRUITED, SELECTED, PROMOTED, DISCIPLINED, REMOVED, AND RETIRED APPROPRIATELY.
2. TRIAL COURT CASE ASSIGNMENT: CASES SHALL BE ASSIGNED UNDER HIS SUPERVISION. HE SHALL APPORTION THE BUSINESS OF THE COURT AMONG THE TRIAL JUDGES AS EQUALLY AS POSSIBLE, AND SHALL REASSIGN CASES AS CONVENIENCE OR NECESSITY REQUIRES. IN ADDITION HE SHALL REQUIRE THAT A JUDGE TO WHOM A CASE IS ASSIGNED ACCEPT THAT

- CASE UNLESS HE IS DISQUALIFIED, OR THE INTERESTS OF JUSTICE REQUIRE THAT THE CASE NOT BE HEARD BY THAT JUDGE.
3. JUDGE ASSIGNMENTS: HE SHALL PREPARE AN ORDERLY PLAN FOR JUDICIAL VACATION, ATTENDANCE AT EDUCATIONAL PROGRAMS, AND SIMILAR MATTERS. THE PLAN SHALL BE APPROVED BY JUDGES OF THE COURT, AND SHALL BE CONSISTENT WITH STATEWIDE GUIDELINES. HE ALSO SHALL REQUIRE ANY JUDGE WHO INTENDS TO BE ABSENT FROM HIS COURT TO NOTIFY THE PRESIDING JUDGE WELL IN ADVANCE OF HIS CONTEMPLATED ABSENCE. HE SHALL HAVE THE POWER TO ASSIGN JUDGES TO THE VARIOUS BRANCHES WITHIN THE DISTRICT.
 4. INFORMATION COMPILATION: HE SHALL HAVE RESPONSIBILITY FOR DEVELOPMENT AND COORDINATION OF STATISTICAL AND MANAGEMENT INFORMATION SCHEMES.
 5. FISCAL MATTERS: HE SHALL HAVE RESPONSIBILITY FOR ACCOUNTS AND AUDITING AS WELL AS PROCUREMENT AND DISBURSING. HE ALSO SHALL PREPARE THE COURT'S PROPOSED ANNUAL BUDGET.
 6. COURT POLICY DECISIONS: HE SHALL APPOINT THE STANDING AND SPECIAL COMMITTEES OF JUDGES OF THE COURT NECESSARY FOR THE PROPER PERFORMANCE OF THE DUTIES OF THE COURT. HE ALSO SHALL CALL MEETINGS OF ALL THE JUDGES AS NEEDED, AND DESIGNATE ONE OF THE OTHER JUDGES AS ACTING PRESIDING JUDGE IN HIS ABSENCE OR INABILITY TO ACT.
 7. RULEMAKING AND ENFORCEMENT: HE SHALL, WITH THE ASSISTANCE OF APPROPRIATE COMMITTEES, PROPOSE LOCAL RULES FOR THE CONDUCT OF THE COURT'S BUSINESS NOT INCONSISTENT WITH RULES PROMULGATED BY THE SUPREME COURT. THESE RULES SHALL INCLUDE SUCH MATTERS AS THE TIMES FOR CONVENING REGULAR SESSIONS OF THE COURT, AND SHALL BE SUBMITTED TO THE JUDGES FOR THEIR APPROVAL. HE SHALL HAVE THE AUTHORITY TO ENFORCE THESE RULES.
 8. LIAISON AND PUBLIC RELATIONS: HE SHALL HAVE RESPONSIBILITY FOR LIAISON WITH OTHER COURT SYSTEMS, AND OTHER GOVERNMENTAL AND CIVIC AGENCIES. HE SHALL REPRESENT THE COURT IN BUSINESS, ADMINISTRATIVE, OR PUBLIC RELATIONS MATTERS. WHEN APPROPRIATE HE SHALL MEET WITH (OR DESIGNATE OTHER JUDGES TO MEET WITH) COMMITTEES OF THE BENCH, BAR, AND NEWS MEDIA TO REVIEW PROBLEMS AND PROMOTE UNDERSTANDING.
 9. IMPROVEMENT IN THE FUNCTIONING OF THE COURT: HE SHALL CONTINUALLY EVALUATE THE EFFECTIVENESS OF THE COURT IN ADMINISTERING JUSTICE. HE SHALL RECOMMEND CHANGES IN THE ORGANIZATION, JURISDICTION, OPERATION, OR PROCEDURES OF THE COURT WHEN HE BELIEVES THESE WOULD INCREASE THE EFFECTIVENESS OF THE COURT.
 10. PUBLIC INPUT INTO COURT ADMINISTRATION: HE SHALL

ESTABLISH A FORUM FOR INTERCHANGE BETWEEN JUDICIAL AND NONJUDICIAL MEMBERS OF THE COURTS STAFF AND INTERESTED MEMBERS OF THE COMMUNITY. LAY INDIVIDUALS SHALL BE APPOINTED TO THE GROUP, AND REPRESENTATIVES OF THE PROSECUTOR'S STAFF, THE BAR ASSOCIATION, AND THE DEFENSE BAR SHOULD PARTICIPATE. REPRESENTATIVES FROM LAW SCHOOLS AND OTHER UNIVERSITY SOURCES AS WELL AS REPRESENTATIVES OF MINORITY, CHURCH, AND CIVIC GROUPS SHALL BE INCLUDED.

IMPLEMENTATION

This standard can be implemented by order of the State Supreme Court. The Montana District Judges Association should be consulted prior to such an order to plan its implementation and discuss any possible difficulties.

REFERENCES

N.A.C. Courts Volume, pp. 180-182, 189-190.

COUNCIL ACTION: Adopted as written.

LOCAL AND REGIONAL TRIAL COURT ADMINISTRATORS

ADOPTEDTASK FORCE FINDINGS

In addition to the state court administrator there should also be administrators on a local level. Their function would be to deal with administrative matters of their district or region, under supervision of the administrative judge, and assist the state court administrator in setting and implementing statewide policies. This would have the dual benefit of relieving the judges of many administrative details and having some one with knowledge of local problems and conditions helping to set and implement statewide policies. Since many judicial districts do not have a sufficient case load to justify a full-time administrator they should combine with other districts, for administrative purposes, into regions.

STANDARD 9.3

EACH TRIAL COURT WITH FIVE OR MORE JUDGES (AND WHERE JUSTIFIED BY CASELOAD, COURTS WITH FEWER JUDGES) SHALL HAVE A FULL-TIME LOCAL TRIAL COURT ADMINISTRATOR. TRIAL COURTS WITH CASELOADS TOO SMALL TO JUSTIFY A FULL-TIME ADMINISTRATOR SHALL COMBINE INTO ADMINISTRATIVE REGIONS AND HAVE A REGIONAL ADMINISTRATOR. LOCAL AND REGIONAL TRIAL COURT ADMINISTRATORS SHALL BE APPOINTED BY THE STATE COURT ADMINISTRATOR WITH THE APPROVAL OF THE ADMINISTRATIVE JUDGE OF THE REGION OR DISTRICT, SUBJECT TO CONFIRMATION BY THE STATE SUPREME COURT. THE FUNCTIONS OF LOCAL AND REGIONAL COURT ADMINISTRATORS SHALL INCLUDE THE FOLLOWING:

1. IMPLEMENTATION OF POLICIES SET BY THE STATE COURT ADMINISTRATOR;
2. ASSISTANCE TO THE STATE COURT ADMINISTRATOR IN SETTING STATEWIDE POLICIES;
3. PREPARATION AND SUBMISSION OF THE BUDGET FOR THE COURT OR COURTS WITH WHICH HE IS CONCERNED;
4. RECRUITING, HIRING, TRAINING, EVALUATING, AND MONITORING PERSONNEL;
5. MANAGEMENT OF SPACE, EQUIPMENT, AND FACILITIES;
6. DISSEMINATION OF INFORMATION;
7. PROCUREMENT OF SUPPLIES AND SERVICES;
8. CUSTODY AND DISBURSEMENT OF FUNDS;
9. PREPARATION OF REPORTS;
10. JUROR MANAGEMENT;

11. STUDY AND IMPROVEMENT OF CASEFLOW, TIME STANDARDS, AND CALENDARING; AND
12. RESEARCH AND DEVELOPMENT OF EFFECTIVE METHODS OF COURT FUNCTIONING, ESPECIALLY THE MECHANIZATION AND COMPUTERIZATION OF COURT OPERATIONS. THE LOCAL AND REGIONAL COURT ADMINISTRATORS SHALL DISCHARGE THEIR FUNCTIONS WITHIN THE GUIDE LINES SET BY THE STATE COURT ADMINISTRATOR.

IMPLEMENTATION

Legislation establishing the state court administrators office should include provisions for the establishment of local and regional administrators and their funding. The regions should be formed by the district judges with the cooperation of county officials and the state court administrator.

REFERENCES

N.A.C. Courts Volume, pp. 183-186

COUNCIL ACTION: Adopted as written.

CASEFLOW MANAGEMENT

ADOPTED

TASK FORCE FINDINGS

On occasion it may be necessary for the state court administrator, under the direction of the Supreme Court, to assign judges on a statewide basis. However, ultimate responsibility for the management and movement of cases shall rest with district court judges. In discharging this responsibility, the following steps shall be taken.

STANDARD 9.4

1. SCHEDULING OF CASES SHALL BE DELEGATED TO NON-JUDICIAL PERSONNEL, BUT CARE SHALL BE TAKEN THAT DEFENSE ATTORNEYS AND PROSECUTORS DO NOT EXERCISE AN IMPROPER INFLUENCE ON SCHEDULING.
2. RECORDKEEPING SHALL BE DELEGATED TO NON-JUDICIAL PERSONNEL.
3. SUBJECT-IN-PROCESS STATISTICS, FOCUSING UPON THE OFFENDER AT EACH STAGE OF THE CRIMINAL PROCESS, SHALL BE DEVELOPED TO PROVIDE INFORMATION CONCERNING ELAPSED TIME BETWEEN EVENTS IN THE FLOW OF CASES, RECIRCULATIONS (MULTIPLE ACTIONS CONCERNING THE SAME DEFENDANT), AND DEFENDANTS RELEASED AT VARIOUS STAGES OF THE COURT PROCESS.
4. THE FLOW OF CASES SHALL BE CONSTANTLY MONITORED BY THE PRESIDING JUDGE, AND THE STATUS OF THE COURT CALENDAR SHALL BE REPORTED TO THE PRESIDING JUDGE AT LEAST ONCE A MONTH.
5. THE PRESIDING JUDGE SHALL ASSIGN JUDGES TO AREAS OF THE COURT CASELOAD THAT REQUIRE SPECIAL ATTENTION.
6. A CENTRAL SOURCE OF INFORMATION CONCERNING ALL PARTICIPANTS IN EACH CASE -- INCLUDING DEFENSE COUNCIL AND THE PROSECUTING ATTORNEY ASSIGNED TO THE CASE -- SHALL BE MAINTAINED. THIS SHALL BE USED TO IDENTIFY AS EARLY AS POSSIBLE CONFLICTS IN THE SCHEDULES OF THE PARTICIPANTS TO MINIMIZE THE NEED FOR LATER CONTINUANCES.

IMPLEMENTATION

May be implemented through the supervisory authority of the Supreme Court.

REFERENCES

N.A.C. Courts Volume, pp. 187-188; A.B.A. Function of the Trial Judge, pp. 48-50; Prosecutor Function, pp. 112-113.

COUNCIL ACTION: Adopted as written.

COORDINATING COUNCILS

ADOPTED

TASK FORCE FINDINGS

In order to properly manage the courts, judges must have the assistance of other people within the system. They need a group that will provide them with informed criticism and recommendations for improvement on a continuous basis. Such a group would also be useful in dispersing information from the courts to other components of the criminal justice system.

STANDARD 9.5

COORDINATING COUNCILS SHALL BE ESTABLISHED ON STATEWIDE, LOCAL AND -- WHERE TRIAL COURTS ARE REGIONALIZED FOR ADMINISTRATIVE PURPOSES -- REGIONAL BASES. EACH COUNCIL SHALL CONTAIN OFFICIAL REPRESENTATIVES OF ALL AGENCIES OF THE CRIMINAL JUSTICE PROCESS WITHIN THE AREA, AS WELL AS MEMBERS OF THE PUBLIC. CHIEF EXECUTIVES OF LAW ENFORCEMENT AGENCIES, PROSECUTOR'S OFFICES, DEFENDER'S OFFICES, PROBATION, PAROLE, CORRECTIONAL AGENCIES, YOUTH AUTHORITIES AND REPRESENTATIVES OF THE MONTANA BOARD OF CRIME CONTROL SHALL BE INCLUDED. THE PRESIDING OR CHIEF JUDGE OF THE APPELLATE OR TRIAL COURT ALSO SHALL BE A MEMBER. THE CHAIRMAN OF THE COUNCIL SHALL BE APPOINTED BY THE CHIEF JUSTICE OF MONTANA'S SUPREME COURT (IN THE CASE OF A STATEWIDE COUNCIL) OR THE PRESIDING JUDGE OF THE TRIAL COURT (IN THE CASE OF A LOCAL OR REGIONAL COUNCIL).

THESE COORDINATING COUNCILS SHALL CONTINUOUSLY SURVEY THE ORGANIZATION, PRACTICE, AND METHODS OF ADMINISTRATION OF THE COURT SYSTEM; ASSIST IN COORDINATING THE COURT SYSTEM WITH OTHER AGENCIES OF THE CRIMINAL JUSTICE SYSTEM; AND MAKE SUGGESTIONS FOR IMPROVEMENT IN THE OPERATION OF THE COURT SYSTEM.

IMPLEMENTATION

No legislation is necessary for the establishment of these councils. However, since they will require some staff and funds their establishment and continued operation should be a function of the local and state court administrators office.

REFERENCES

N.A.C. Courts Volume, pp. 189-190.

COUNCIL ACTION: Adopted as written.

COURT-COMMUNITY RELATIONS



Court-community relations were not a problem in Montana's early days. The community was the court. When a matter, whether civil or criminal, required adjudication someone was appointed or elected judge and everyone in the community who wished, participated in the trial. At the end, the entire assembly voted on the verdict and frequently set the sentence. Thus everyone understood how the process worked, what it did, and why.

Then, gradually, as formal law came to the state, this participation lessened and with it went the close relationship the citizen had with the criminal justice process. We have now reached a point where few people participate in the process and even fewer understand it. They are all well aware of its existence but how or why it acts as it does is a mystery to many.

That lack of understanding creates some serious problems. The courts, because they are entrusted with protecting the rights of the individual, must take many unpopular actions. To a layman, knowing little or nothing about the court, these actions can seem unfair, unethical or dishonest. He may, and often does, react by being reluctant to participate in the judicial process as a witness or juror, balking at budget time, failure to support court sponsored programs or most serious of all, loss of respect for the law the court represents.

There is little that can be done about the unpopularity of the decisions. That will always be with us. What can be done is to allay the suspicions by making the public aware of how the courts work, and why they do as they do. There are a number of ways this can be done. Probably the best, and one which should definitely not be omitted, is by developing a good working relationship with the press.

Another way of engendering respect for the court is by affording it to those members of the public who are called upon to participate in the process. Witnesses, victims and jurors are frequently undergoing some hardship as a result of their participation. They should be treated with courtesy and consideration. Finally, the facilities which house the judicial process should be proper. Not only can they affect the progress of the trial they are also a symbol of those processes.

ADOPTED

TASK FORCE FINDINGS

While it is vital that those persons conducting a trial be competent and conscientious, it is nearly as important that the physical facilities be adequate. Not only can these facilities affect the moods and attitudes of the persons involved in a trial, they can also impede or expedite the actual conduct of the trial. Further, they are a symbol to the public of the court system. An aging, outdated courthouse is not likely to generate respect for the processes which it houses. Adequate physical facilities should be provided for court processing of criminal defendants. These facilities include the courthouse structure itself and such internal components as the courtroom and its adjuncts, and facilities and conveniences for witnesses, jurors, and attorneys. Facilities provided should conform to the following requirements:

STANDARD 10.1

1. THE COURTHOUSE STRUCTURE SHOULD BE ADEQUATE IN DESIGN AND SPACE TO ACCOMMODATE THE FUNCTIONS HOUSED WITHIN IT. ALL ROOMS IN THE COURTHOUSE SHOULD BE PROPERLY LIGHTED, HEATED, AND AIRCONDITIONED.
2. THE DETENTION FACILITY SHOULD BE NEAR THE COURTHOUSE.
3. THE COURTROOM SHOULD BE DESIGNED TO FACILITATE INTERCHANGE AMONG THE PARTICIPANTS IN THE PROCEEDINGS. THE FLOOR PLAN AND ACOUSTICS SHOULD ENABLE THE JUDGE AND THE JURY TO SEE AND HEAR THE COMPLETE PROCEEDINGS. A JURY ROOM, JUDGE'S CHAMBERS, STAFF ROOM, AND DETENTION AREA SHOULD BE CONVENIENT TO EACH COURTROOM.
4. EACH JUDGE SHOULD HAVE ACCESS TO AN ADEQUATE UP-TO-DATE LIBRARY.
5. PROVISION SHOULD BE MADE FOR WITNESS WAITING AND ASSEMBLY ROOMS. SEPARATE ROOMS FOR PROSECUTION AND DEFENSE WITNESSES SHOULD BE PROVIDED. THE ROOMS SHOULD BE LARGE ENOUGH TO ACCOMMODATE THE NUMBER OF WITNESSES EXPECTED DAILY. THEY SHOULD BE COMFORTABLY FURNISHED AND ADEQUATELY LIGHTED.
6. JUROR PRIVACY SHOULD BE MAINTAINED. ASSEMBLY ROOMS SHOULD BE PROVIDED FOR JURORS WHICH SHOULD NOT BE ACCESSIBLE TO

WITNESSES, ATTORNEYS, OR SPECTATORS. THEY SHOULD BE FURNISHED COMFORTABLY, AND LIGHT-ED ADEQUATELY.

7. AN ATTORNEYS' WORKROOM SHOULD BE AVAILABLE IN THE COURTHOUSE FOR PUBLIC AND PRIVATE ATTORNEYS. THE ROOM SHOULD BE FURNISHED WITH DESKS, TABLES, AND TELEPHONES. IT SHOULD BE LOCATED NEAR A LAW LIBRARY. THERE ALSO SHOULD BE ROOMS IN THE COURTHOUSE WHERE DEFENSE ATTORNEYS CAN, IN SECURITY, TALK PRIVATELY WITH THEIR CLIENTS.
8. THE PHYSICAL FACILITIES DESCRIBED IN THIS STANDARD SHOULD BE CLEAN AND SERVICEABLE AT ALL TIMES.

IMPLEMENTATION

Counties will be responsible for the implementation of this standard. Unless new courthouse facilities are to be constructed, we may expect the updating process to be gradual.

REFERENCES

N.A.C. Courts Volume, pp. 196-197; A.B.A. Defense Function, pp. 200-204; Trial Judge, p. 37.

COUNCIL ACTION: Adopted as written.

COURT PUBLIC INFORMATION AND EDUCATION PROGRAMS

ADOPTEDTASK FORCE FINDINGS

The public has a general lack of information about the court and its processes. This lack of knowledge tends to cause distrust and dissatisfaction, especially for those who may be called upon to serve as witnesses or jurors. The court, the news media, the public, and the bar should assume coordinate responsibilities for informing and educating the public about the functions of the courts. The court should pursue an active role in this process.

STANDARD 10.2

1. EACH COURT SHOULD PROVIDE LIAISON BETWEEN COURTS AND NEWS MEDIA; TO:
 - a. DISSEMINATE INFORMATION PERTAINING TO COURT OPERATION AND ADMINISTRATION THAT MAY BE OF INTEREST TO THE PUBLIC.
 - b. ESTABLISH GUIDELINES FOR MEDIA COVERAGE OF JUDICIAL PROCEEDINGS.
2. THE COURT SHOULD TAKE AFFIRMATIVE ACTION TO EDUCATE AND INFORM THE PUBLIC OF THE FUNCTION AND ACTIVITIES OF THE COURT. THIS SHOULD INCLUDE:
 - a. THE ISSUANCE OF PERIODIC REPORTS CONCERNING THE COURT'S WORKLOAD, ACCOMPLISHMENTS, AND CHANGES IN PROCEDURE.
 - b. PREPARATION OF HANDBOOKS FOR JURORS AND WITNESSES EXPLAINING THEIR ROLE.
 - c. PERSONAL PARTICIPATION BY THE JUDGES AND COURT PERSONNEL IN COMMUNITY ACTIVITIES.
 - d. THE JUDGE INSTRUCTING EACH JURY PANEL, PRIOR TO ITS MEMBERS SETTING IN ANY CASE, CONCERNING ITS RESPONSIBILITIES, ITS CONDUCT, AND THE PROCEEDINGS OF A CRIMINAL TRIAL.
3. THE COURT SHOULD ENCOURAGE CITIZENS' GROUPS TO INFORM THEMSELVES OF THE FUNCTIONS AND ACTIVITIES OF THE COURTS AND IN TURN SHARE THIS INFORMATION WITH THE REST OF THE PUBLIC.
4. THE COURT SHOULD WORK WITH BAR ASSOCIATIONS TO EDUCATE THE PUBLIC ABOUT LAW AND THE COURTS.

5. THE PROSECUTOR AND THE COURT SHOULD ESTABLISH PROCEDURES WHEREBY WITNESSES MAY TELEPHONE TO REQUEST INFORMATION RELATING TO CASES OR COURT APPEARANCES IN WHICH THEY ARE INVOLVED.
6. JUDGES AND COURT PERSONNEL SHOULD PARTICIPATE IN CRIMINAL JUSTICE PLANNING ACTIVITIES AS A MEANS OF DISSEMINATING INFORMATION CONCERNING THE COURT SYSTEM AND OF FURTHERING THE OBJECTIVE OF COORDINATION AMONG AGENCIES OF THE CRIMINAL JUSTICE SYSTEM.

IMPLEMENTATION

No legislation is required to enact this standard. A coordinated effort is necessary by the courts, the public, and the news media, with the initial impetus to come from the courts.

REFERENCES

N.A.C. Courts Volume, pp. 198-201; A.B.A. Trial by Jury, pp. 85-89.

COUNCIL ACTION: Adopted as written.

PRODUCTION OF WITNESSES

ADOPTED

TASK FORCE FINDINGS

Frequently a witness will be compelled to spend many long hours away from his home or job waiting to testify, when his actual testimony may take only minutes. Occasionally, he may not even be called upon or his testimony may be superfluous or redundant. This is unfair to the witness, it increases the natural reluctance of many persons to be witnesses, and does nothing to promote the flow of the judicial process. Prosecution and defense witnesses should be called only when their appearances are of value to the court. No more witnesses should be called than necessary.

STANDARD 10.3

1. THE FOLLOWING PROCEDURES ARE RECOMMENDED FOR WITNESSES OTHER THAN POLICE OFFICERS:
 - a. PROSECUTORS AND DEFENSE COUNSEL SHOULD REQUIRE THE ATTENDANCE ONLY OF THOSE WITNESSES WHOSE TESTIMONY IS REQUIRED BY LAW OR WOULD BE OF VALUE IN RESOLVING ISSUES TO BE LITIGATED.
 - b. PROCEDURES SHOULD BE INSTITUTED TO PLACE CERTAIN WITNESSES ON TELEPHONE ALERT. SUCH WITNESSES SHOULD BE REQUIRED AS EARLY AS POSSIBLE TO IDENTIFY WHETHER AND HOW THEY MAY BE CONTACTED BY TELEPHONE ON COURT BUSINESS DAYS AND WHETHER, IF SO CONTACTED, THEY CAN APPEAR AT COURT WITHIN TWO HOURS OF SUCH NOTIFICATION. WITNESSES WHO APPEAR LIKELY TO RESPOND TO TELEPHONE NOTIFICATION SHOULD BE PLACED ON TELEPHONE ALERT. ON THE MORNING OF EACH COURT DATE, THE PROSECUTOR AND DEFENSE COUNSEL SHOULD DETERMINE THE NUMBER OF CASES IN WHICH WITNESSES ARE ON ALERT AND SHOULD PROMPTLY NOTIFY THOSE WITNESSES WHOSE PRESENCE WILL BE REQUIRED LATER IN THE DAY. WITNESSES WHO UNREASONABLY DELAY THEIR ARRIVAL IN COURT AFTER SUCH NOTIFICATION SHOULD NOT BE PLACED ON TELEPHONE ALERT FOR SUBSEQUENT APPEARANCES.

- c. UPON INITIATION OF CRIMINAL PROCEEDINGS OR AS SOON AFTER AS POSSIBLE, THE PROSECUTOR AND DEFENSE COUNSEL SHOULD ASK THEIR WITNESSES WHICH FUTURE DATES WOULD BE PARTICULARLY INCONVENIENT FOR THEIR APPEARANCE AT COURT. THE SCHEDULING AUTHORITY SHOULD BE APPRAISED OF THESE DATES AND SHOULD, IN SO FAR AS IS POSSIBLE, AVOID SCHEDULING COURT APPEARANCES REQUIRING THE WITNESSES' ATTENDANCE ON THOSE DATES.
2. POLICE OFFICERS:
- a. UPON BRINGING THE DEFENDANT BEFORE A MAGISTRATE, THE ARRESTING POLICE OFFICER SHOULD BE EXCUSED FROM FURTHER APPEARANCES IN THE CASE UNLESS THE PROSECUTOR REQUIRES HIS ATTENDANCE FOR ANY PARTICULAR PROCEEDING.
 - b. POLICE AGENCIES SHOULD ESTABLISH PROCEDURES WHEREBY POLICE OFFICERS MAY CONTINUE THEIR REGULAR POLICE DUTIES AND AT THE SAME TIME BE AVAILABLE FOR PROMPT APPEARANCE AT COURT UPON NOTIFICATION THAT THEIR APPEARANCE MAY BE REQUIRED.
 - c. ROUTINE CUSTODIAL DUTIES RELATING TO THE PROCESSING OF A CRIMINAL CASE SHOULD BE HANDLED BY A CENTRAL OFFICER TO RELIEVE THE INDIVIDUAL ARRESTING OFFICER OF THESE DUTIES. ELECTRONIC DOCUMENT TRANSMISSION EQUIPMENT SHOULD BE USED WHEN FEASIBLE IN PLACE OF POLICE TRANSPORTATION OF DOCUMENTS TO COURT.
 - d. POLICE AGENCIES SHOULD PROVIDE, TO THE AUTHORITY SCHEDULING COURT APPEARANCES, THE DATES ON WHICH EACH POLICE OFFICER WILL BE AVAILABLE. THE SCHEDULE SHOULD LIST A SUFFICIENT NUMBER OF POSSIBLE DATES FOR EACH MONTH OR TERM OF COURT TO PERMIT THE SCHEDULING AUTHORITY FLEXIBILITY IN CHOOSING AMONG THEM WHEN ASSIGNING COURT DATES. THE SCHEDULING AUTHORITY SHOULD CONSULT THE SCHEDULES IN SELECTING DATES FOR CRIMINAL PROCEEDINGS. IN SO FAR AS POSSIBLE, THE SCHEDULING AUTHORITY SHOULD SCHEDULE COURT APPEARANCES THAT INCONVENIENCE THE OFFICER AND HIS DEPARTMENT AS LITTLE AS POSSIBLE.

IMPLEMENTATION

This standard does not require legislation, however rules governing witnesses, incorporating these standards, should be established by the courts.

REFERENCES

N.A.C. Courts Volume, pp. 208-212.

COUNCIL ACTION: Adopted as written.

COMPENSATION OF WITNESSES

ADOPTEDTASK FORCE FINDINGS

A trial, especially a long one, can create real hardships for a witness through a loss of wages. Current rates of witness compensation do little to correct this. The pay should be set at a level sufficient to prevent hardship, yet not so high as to encourage "professional" witnesses.

STANDARD 10.4

OFF-DUTY POLICE WITNESSES SHOULD BE COMPENSATED FOR THEIR ATTENDANCE AT CRIMINAL COURT PROCEEDINGS AT A RATE EQUAL TO THAT AT WHICH THEY WOULD BE COMPENSATED WERE THEY PERFORMING OTHER OFFICIAL DUTIES AT THE TIME OF THE COURT APPEARANCE. COMPENSATION SHOULD COVER THE ACTUAL TIME SPENT IN THE COURT PROCESS BY THE OFF-DUTY POLICE OFFICER. CITIZEN-WITNESSES AT CRIMINAL PROCEEDINGS SHOULD RECEIVE COMPENSATION FOR COURT APPEARANCES AT A MINIMUM RATE OF TWICE THE PREVAILING FEDERAL MINIMUM WAGE FOR EACH HOUR THE WITNESSES SPENDS IN COURT. AN OFFICER OF THE COURT SHOULD CERTIFY THE TIME SPENT BY THE WITNESS IN COURT BETWEEN ARRIVAL AND DISMISSAL; PAYMENT SHOULD BE MADE ACCORDINGLY. A WITNESS SHOULD BE PAID FOR ROUND-TRIP TRAVEL BETWEEN THE COURT AND HIS RESIDENCE OR BUSINESS ADDRESS, WHICHEVER IS SHORTER, AT THE STATE GOVERNMENT MILEAGE RATE FOR EACH MILE TRAVELED TO AND FROM COURT.

IMPLEMENTATION

Legislation is required to change the rates of witness compensation. The necessary funds should be a part of the court budget which, as indicated in standard 8.1, should be state funded.

REFERENCES

N.A.C. Courts Volume, pp. 213-214.

COUNCIL ACTION: Adopted as written.

**THE
PROSECUTION**

CHAPTER 11 - OVERVIEW

THE PROSECUTION

There has been little change in the office of the prosecutor in Montana since 1930. That was when the Montana State Crime Commission stated that "Inadequate pay for county attorneys has made that office a training school for beginning lawyers in many of our counties."¹ The pay has increased some since then but not sufficiently. Consequently, most are part time, reliant on a private practice for their major source of income. (County attorneys in counties of 30,000 or more are prohibited from private practice -- after the next election.)²

The function of the prosecutor in the criminal justice system is a critical one. It is he who determines whether or for what an offender should be charged. He presents the governments case in court, and is often an investigator and initiator of the criminal process. All of these require skill, knowledge, adequate resources including subpoena power, and above all, the full attention of the prosecutor. A private law practice has to detract from this.

It is true that many counties do not have a sufficient work load for a full time county attorney. Rather than having a part time one, as many do, a better solution would be to combine the county attorney office with one or more similarly situated counties. They would then have a prosecutor without a conflicting private practice and one whose skills are concentrated on the prosecution function. They would also be able to furnish

better salaries and facilities and would probably have less turn over in the county attorney's office.

In addition to making the office of the prosecutor a full time one, steps should be taken to upgrade it. Training programs, staff, and facilities should reflect the importance of the prosecutorial function. Training should be ongoing and thorough and should be coordinated on a statewide basis for purposes of quality and economics. Staff should also be trained and compensated adequately to attract and retain qualified persons. The facilities should be designed to promote speed and efficiency and to promote respect for the office.

¹ Report of the Montana State Crime Commission, 1930, p. 95.

² Revised Codes of Montana, 1975, Title 16, Chapter 31, Section 16-3106.

PROFESSIONAL STANDARDS FOR PROSECUTORS AND
ASSISTANT PROSECUTORSAMENDED
ADOPTEDTASK FORCE FINDINGS

In the attempt to control crime, the office of the prosecutor is one of the most important and demanding. Today's prosecutor must have a thorough knowledge of our very complex laws, and must continually upgrade his knowledge and skills. He must be free of possibly conflicting outside interests and must be instrumental in developing and implementing long range crime reduction programs. This description does not match the part time prosecutor, reliant on his private practice for a sizable portion of his income, common to many areas in Montana.

It is time for some radical changes. If we wish criminals to be prosecuted to the full extent of the law, as effectively as possible, we must allow the prosecutor sufficient time, resources, and funding to do so. He in turn must devote all of his time and energies to fulfilling the duties of his office and the upgrading of its capabilities.

STANDARD 11.1

THE COMPLEXITIES AND DEMANDS OF THE PROSECUTION REQUIRE THAT THE PROSECUTOR BE A FULL-TIME, SKILLED PROFESSIONAL SELECTED ON THE BASIS OF DEMONSTRATED ABILITY AND HIGH PERSONAL INTEGRITY. HE SHALL BE AUTHORIZED TO SERVE A MINIMUM TERM OF SIX YEARS AT AN ANNUAL SALARY TO BE PAID BY THE STATE, COMPARABLE TO THAT OF THE PRESIDING JUDGE OF THE TRIAL COURT OF GENERAL JURISDICTION. THE JURISDICTION OF HIS OFFICE SHALL BE DESIGNED SO THAT POPULATION CASE LOAD AND OTHER RELEVANT FACTORS WARRANT AT LEAST ONE FULL-TIME PROSECUTOR.

THE PRIMARY BASIS FOR THE SELECTION AND RETENTION OF ASSISTANT PROSECUTORS SHALL BE DEMONSTRATED LEGAL ABILITY. CARE SHOULD BE TAKEN TO RECRUIT LAWYERS FROM ALL SEGMENTS OF THE POPULATION. THE PROSECUTOR SHALL UNDERTAKE PROGRAMS, SUCH AS LEGAL INTERNSHIPS FOR LAW STUDENTS, DESIGNED TO ATTRACT ABLE YOUNG LAWYERS TO CAREERS IN PROSECUTION.

THE POSITION OF ASSISTANT PROSECUTOR SHALL BE A FULL-TIME OCCUPATION, AND HE SHALL BE PROHIBITED FROM ENGAGING IN OUTSIDE LAW PRACTICE. THE STARTING SALARIES SHALL BE NO LESS THAN THOSE PAID BY PRIVATE LAW FIRMS IN THE JURISDICTION, AND THE

PROSECUTOR SHALL HAVE THE AUTHORITY TO INCREASE PERIODICALLY THE SALARIES FOR ASSISTANT PROSECUTORS TO A LEVEL THAT WILL ENCOURAGE THE RETENTION OF ABLE AND EXPERIENCED PROSECUTORS, SUBJECT TO APPROVAL OF THE LEGISLATURE, CITY, OR COUNTY BOARD AS APPROPRIATE. FOR THE FIRST FIVE YEARS OF SERVICE, SALARIES OF ASSISTANT PROSECUTORS SHALL BE COMPARABLE TO THOSE OF ATTORNEY ASSOCIATES IN LOCAL PRIVATE LAW FIRMS.

THE CASE LOAD FOR EACH ASSISTANT PROSECUTOR SHALL BE LIMITED TO PERMIT THE PROPER PREPARATION OF CASES AT EVERY LEVEL OF THE CRIMINAL PROCEEDINGS. ASSISTANT PROSECUTORS SHALL BE ASSIGNED CASES SUFFICIENTLY IN ADVANCE OF THE COURT DATE IN ORDER TO ENABLE THEM TO INTERVIEW EVERY PROSECUTION WITNESS, AND TO CONDUCT SUPPLEMENTAL INVESTIGATIONS WHEN NECESSARY.

IMPLEMENTATION

Extensive legislation and reorganization will be necessary to implement this standard. It should be done only after an implementation plan has been prepared with the assistance of the Montana Association of Counties and the Montana County Attorneys Association.

REFERENCES

N.A.C. Courts Volume, pp. 279-281
A.B.A. Prosecutorial Function, pp. 50-62.

COUNCIL ACTION:

The council felt it was the duty of the state to provide adequate prosecutor's salaries and amended the standard by inserting the words "to be paid by the state, comparable to" on lines 6 and 7. With this amendment the standard was adopted.

SUPPORTING STAFF AND FACILITIES

ADOPTEDTASK FORCE FINDINGS

Many of Montana's county attorneys are now operating with severely limited staff and minimal facilities. The result is that a large part of their time is spent on matters only indirectly related to their prosecutorial function and their operations are hampered and inefficient.

With our present system this is to be expected. Few counties can afford to fund their prosecutor adequately especially since many require him on only a part-time basis. The expanded jurisdiction--and resultant increase in funding--as recommended in Standard 12.1 should alter that situation. When those funds become available the prosecutor's office should be provided with the staff needed to enable him to concentrate on prosecutorial duties, and with the necessary facilities to do so effectively and efficiently.

STANDARD 11.2

THE OFFICE OF THE PROSECUTOR SHALL HAVE A SUPPORTING STAFF COMPARABLE TO THAT OF SIMILAR-SIZE PRIVATE LAW FIRMS. PROSECUTORS WHOSE OFFICES SERVE METROPOLITAN JURISDICTIONS SHALL APPOINT AN OFFICE MANAGER WITH THE RESPONSIBILITY FOR PROGRAM PLANNING AND BUDGET MANAGEMENT, PROCUREMENT OF EQUIPMENT AND SUPPLIES, AND SELECTION AND SUPERVISION OF NON-LEGAL PERSONNEL. PARAPROFESSIONALS SHALL BE UTILIZED FOR LAW-RELATED TASKS THAT DO NOT REQUIRE PROSECUTORIAL EXPERIENCE AND TRAINING. THERE SHALL BE ADEQUATE SECRETARIAL HELP FOR ALL STAFF ATTORNEYS. SPECIAL EFFORTS SHALL BE MADE TO RECRUIT MEMBERS OF THE SUPPORTING STAFF FROM ALL SEGMENTS OF THE COMMUNITY SERVED BY THE OFFICE.

THE PHYSICAL FACILITIES SHALL BE COMPARABLE TO THOSE OF SIMILAR SIZE PRIVATE LAW FIRMS. THERE SHALL BE AT LEAST ONE CONFERENCE ROOM AND ONE LOUNGE FOR STAFF ATTORNEYS, AND A PUBLIC WAITING AREA SEPARATE FROM THE OFFICES OF THE STAFF. THE PROSECUTOR AND HIS STAFF SHALL HAVE IMMEDIATE ACCESS TO A LIBRARY SUFFICIENTLY EXTENSIVE TO FULFILL THE RESEARCH NEEDS OF THE OFFICE. STAFF ATTORNEYS SHALL BE SUPPLIED WITH PERSONAL COPIES OF BOOKS, SUCH AS THE STATE CRIMINAL CODE, NEEDED FOR THEIR DAY-TO-DAY DUTIES.

THE PROSECUTOR'S OFFICE SHALL HAVE A FILE CONTROL SYSTEM CAPABLE OF LOCATING ANY CASE FILE IN NOT MORE THAN THIRTY MINUTES AFTER DEMAND, AND A STATISTICAL SYSTEM, EITHER AUTOMATED OR MANUAL, SUFFICIENT TO PERMIT THE PROSECUTOR TO EVALUATE AND MONITOR THE PERFORMANCE OF HIS OFFICE.

IMPLEMENTATION

This standard should be implemented in conjunction with Standard 12.1. The portion describing physical facilities should be considered as the county's upgrade their facilities.

REFERENCES

N.A.C. Courts Volume, pp. 234-236, 241-242.
A.B.A. Prosecutorial Function, pp. 63-64.

COUNCIL ACTION: Adopted as written.

CONTINUED EDUCATION OF PROFESSIONAL PERSONNEL

ADOPTEDTASK FORCE FINDINGS

To be as effective as possible, a prosecutor must keep continually abreast of any changes in the law. He should also be aware of new programs and administrative techniques. This requires training, not only for the newly elected prosecutor, but also, on an ongoing basis. Some of this need only be brief in-house sessions for the prosecutor and his staff. Some will require attendance at regional or national seminars. As much as possible, existing programs and resources should be developed in Montana to meet these training needs. However, this does not mean that out-of-state programs should be avoided. The exchange of ideas and information at these programs is invaluable.

STANDARD 11.3

EDUCATION PROGRAMS SHALL BE UTILIZED TO ASSURE THAT PROSECUTORS AND THEIR ASSISTANTS HAVE THE HIGHEST POSSIBLE PROFESSIONAL COMPETENCE. ALL NEWLY ELECTED OR APPOINTED PROSECUTORS SHALL ATTEND PROSECUTORS' TRAINING COURSES PRIOR TO TAKING OFFICE, AND IN-HOUSE TRAINING PROGRAMS FOR NEW ASSISTANT PROSECUTORS SHALL BE AVAILABLE IN ALL METROPOLITAN PROSECUTION OFFICES. ALL PROSECUTORS AND ASSISTANTS SHALL ATTEND A FORMAL PROSECUTORS' TRAINING COURSE EACH YEAR, IN ADDITION TO THE REGULAR IN-HOUSE TRAINING.

IMPLEMENTATION

This training should be developed and implemented through the statewide organization of prosecutors (see Standard 11.4). Funds should be included in that organizations budget for this purpose. legislation is needed.

REFERENCES

N.A.C. Courts Volume, pp. 234-240.
A.B.A. Prosecutors Function, pp. 57-62, 66-67.

COUNCIL ACTION: Adopted as written.

STATEWIDE ORGANIZATION OF PROSECUTORS

ADOPTED

TASK FORCE FINDINGS

Both the National Advisory Commission¹ and the American Bar Association² recommend some form of a statewide organization for prosecutors. Such an organization would improve the exchange of information throughout the state and help to assure more uniformity in the enforcement of the criminal law. It would also be the logical body to coordinate prosecutorial training and promote the development of new programs and policies. It should be officially recognized and funded, at least in part, by the state. This would make possible more and better programs plus lending credence to the organization itself.

STANDARD 11.4

THERE SHALL BE A STATE-LEVEL ENTITY THAT MAKES AVAILABLE, TO LOCAL PROSECUTORS WHO REQUEST THEM, THE FOLLOWING:

1. ASSISTANCE IN THE DEVELOPMENT OF INNOVATIVE PROSECUTION PROGRAMS;
2. SUPPORT SERVICES, SUCH AS LABORATORY ASSISTANCE; SPECIAL COUNSEL, INVESTIGATORS, ACCOUNTANTS, AND OTHER EXPERTS; DATA-GATHERING SERVICES; APPELLATE RESEARCH SERVICES; AND OFFICE MANAGEMENT ASSISTANCE. THIS ENTITY SHALL CONDUCT MEETINGS EACH YEAR, AT WHICH PROSECUTORS FROM THROUGHOUT THE STATE CAN ENGAGE IN CONTINUING EDUCATION AND EXCHANGE WITH OTHER PROSECUTORS. IN ADMINISTERING ITS PROGRAM, THE ENTITY SHALL TRY TO ELIMINATE UNDESIRABLE DISCREPANCIES IN LAW ENFORCEMENT POLICIES. AN INDEPENDENT STATE AGENCY SHALL BE CREATED TO PERFORM THESE FUNCTIONS. THE AGENCY AND ITS PROGRAM SHALL BE FUNDED BY THE STATE THROUGH THE EXECUTIVE BUDGET. IT SHALL HAVE OFFICERS AND A

¹ National Advisory Commission on Criminal Justice Standards and Goals, Courts Volume, p. 237 (1973)

² American Bar Association Project on Standards for Criminal Justice, The Prosecution Function, p. 50, (1971).

GOVERNING BOARD ELECTED BY THE MEMBERSHIP.
THE ATTORNEY GENERAL OF THE STATE SHALL BE
AN EX-OFFICIO MEMBER OF THE GOVERNING BOARD.
A FULLTIME EXECUTIVE DIRECTOR SHALL BE PRO-
VIDED TO ADMINISTER THE AGENCY, AND ITS
PROGRAM.

IMPLEMENTATION

There is now in existence a Montana County Attorneys Association. That association should be the nucleus of the one proposed in this standard with the necessary expansion of its duties and capabilities. Legislation is required.

REFERENCES

N.A.C. Courts Volume, pp. 237-238.
A.B.A. Prosecutors Function, pp. 50-57, 63-64.

COUNCIL ACTION: Adopted as written.

DEVELOPMENT AND REVIEW OF OFFICE POLICIES

**AMENDED
ADOPTED**TASK FORCE FINDINGS

The enormous amount of discretion exercised by the prosecutor's office requires that there be formal written policies for the exercise of that discretion. The decisions made can drastically affect individuals lives and must not be made informally or in a random manner. Formal policies will protect the individual, will aid the prosecutor and his staff in their decisions, and will serve to answer any questions that may arise as to the propriety of a decision.

STANDARD 11.5

EACH PROSECUTOR'S OFFICE SHALL DEVELOP A DETAILED STATEMENT OF OFFICE PRACTICES AND POLICIES FOR DISTRIBUTION TO EVERY ASSISTANT PROSECUTOR. THESE POLICIES SHALL BE REVIEWED EVERY SIX MONTHS. THE STATEMENT SHALL INCLUDE GUIDELINES GOVERNING SCREENING, DIVERSION, PLEA NEGOTIATIONS AND RELATIONS WITH THE MEDIA, AS WELL AS OTHER INTERNAL OFFICE PRACTICES.

IMPLEMENTATION

May be implemented by the individual county attorneys.

REFERENCES

N.A.C. Courts Volume, p. 243.
A.B.A. Prosecution Function, pp. 64-66.

COUNCIL ACTION:

"and relations with the media" was added to this standard as it was felt necessary to have office policies in this area. The standard was then adopted.

THE PROSECUTOR'S INVESTIGATIVE ROLE

ADOPTEDTASK FORCE FINDINGS

Normally the prosecutor should concentrate on representing the state in court, relying on the local law enforcement agencies for investigation. It is necessary, however, that on occasion he assume an investigative role. In cases where the law enforcement agencies are too pressed by other matters, if the case is so complex it requires his participation, or if there is allegation of police misconduct or governmental corruption he may need either to be involved in or to initiate the investigation. When such cases arise he should have the resources to investigate properly.

STANDARD 11.6

THE PROSECUTOR'S PRIMARY FUNCTION SHALL BE TO REPRESENT THE STATE IN COURT. HE SHALL COOPERATE WITH THE POLICE IN THEIR INVESTIGATION OF CRIME. EACH PROSECUTOR ALSO SHALL HAVE INVESTIGATORIAL RESOURCES AT HIS DISPOSAL TO ASSIST HIM IN CASE PREPARATION, TO SUPPLEMENT THE RESULTS OF POLICE INVESTIGATION WHEN POLICE LACK ADEQUATE RESOURCES FOR SUCH INVESTIGATION AND, IN A LIMITED NUMBER OF SITUATIONS, TO UNDERTAKE AN INITIAL INVESTIGATION OF POSSIBLE VIOLATIONS OF THE LAW.

THE PROSECUTOR SHALL BE GIVEN THE POWER, SUBJECT TO APPROPRIATE SAFEGUARDS, TO ISSUE SUBPOENAS REQUIRING POTENTIAL WITNESSES IN CRIMINAL CASES TO APPEAR FOR QUESTIONING. SUCH WITNESSES SHALL BE SUBJECT TO CONTEMPT PENALTIES FOR UNJUSTIFIED FAILURE TO APPEAR FOR QUESTIONING OR TO RESPOND TO SPECIFIC QUESTIONS.

THE OFFICE OF THE PROSECUTOR SHALL REVIEW ALL APPLICATIONS FOR SEARCH AND ARREST WARRANTS PRIOR TO THEIR SUBMISSION BY LAW ENFORCEMENT OFFICERS TO A JUDGE FOR APPROVAL; NO APPLICATION FOR A SEARCH OR ARREST WARRANT SHALL BE SUBMITTED TO A JUDGE UNLESS THE PROSECUTOR OR ASSISTANT PROSECUTOR APPROVES THE WARRANT.

IMPLEMENTATION

Most county attorneys now have some investigatory capabilities and it would be relatively easy to increase them with sufficient funding. However, for issuing subpoenas, legislation would be necessary. State ex. rel. Woodahl v. District Court, -M-, 530P2d780 states, "A subpoena must be issued by a court and is not available to the attorney general or other prosecuting attorneys independent of a court or grand jury." Review of search and arrest warrants, by the prosecutor, prior to submission to a judge, should be enacted by the individual judges.

REFERENCES

N.A.C. Courts Volume, pp. 244-246;
A.B.A. Prosecutors Function, pp. 76-81; Revised Codes
of Montana Title 95, Sec. 95-1801.

COUNCIL ACTION: Adopted as written.

PROSECUTOR RELATIONSHIPS WITH THE PUBLIC AND WITH OTHER AGENCIES OF THE CRIMINAL JUSTICE SYSTEM

ADOPTED

TASK FORCE FINDINGS

In large part the prosecutor must rely on the good will of other agencies of the criminal justice system and the public. As an agency absolutely dependent on information from outside sources, most of which is garnered informally, the prosecutor must maintain a good working relationship with his sources of information. He must also be aware that such an information flow should be two way. The following standard sets forth recommendations for establishing and maintaining that flow.

STANDARD 11.7

THE PROSECUTOR SHALL BE AWARE OF THE IMPORTANCE OF THE FUNCTION OF HIS OFFICE FOR OTHER AGENCIES OF THE CRIMINAL JUSTICE SYSTEM AND FOR THE PUBLIC AT LARGE. HE SHALL MAINTAIN RELATIONSHIPS THAT ENCOURAGE INTERCHANGE OF VIEWS AND INFORMATION AND THAT MAXIMIZE COORDINATION OF THE VARIOUS AGENCIES OF THE CRIMINAL JUSTICE SYSTEM.

THE PROSECUTOR SHALL MAINTAIN REGULAR LIAISON WITH THE POLICE DEPARTMENT IN ORDER TO PROVIDE LEGAL ADVICE TO THE POLICE, TO IDENTIFY MUTUAL PROBLEMS AND TO DEVELOP SOLUTIONS TO THOSE PROBLEMS. HE SHALL PARTICIPATE IN LAW ENFORCEMENT TRAINING PROGRAMS AND KEEP THE POLICE INFORMED ABOUT CURRENT DEVELOPMENTS IN LAW ENFORCEMENT, SUCH AS SIGNIFICANT COURT DECISIONS. HE SHALL DEVELOP AND MAINTAIN A LIAISON WITH THE POLICE LEGAL ADVISER IN THOSE AREAS RELATING TO POLICE-PROSECUTOR RELATIONSHIPS.

THE PROSECUTOR SHALL DEVELOP FOR THE USE OF LAW ENFORCEMENT A REPORT FORM THAT INCLUDES ALL RELEVANT INFORMATION ABOUT THE OFFENSE AND THE OFFENDER NECESSARY FOR CHARGING, PLEA NEGOTIATIONS, AND TRIAL. THE COMPLETED FORM SHALL BE ROUTINELY FORWARDED TO THE PROSECUTOR'S OFFICE AFTER THE OFFENDER HAS BEEN PROCESSED BY THE POLICE. POLICE OFFICERS SHALL BE INFORMED BY THE PROSECUTOR OF THE DISPOSITION OF ANY CASE WITH WHICH THEY WERE INVOLVED AND THE REASON FOR THE DISPOSITION.

THE RELATIONSHIP BETWEEN THE PROSECUTOR AND THE COURT AND DEFENSE BAR SHALL BE CHARACTERIZED BY PROFESSIONALISM, MUTUAL RESPECT AND INTEGRITY. IT SHALL NOT BE CHARACTERIZED BY DEMONSTRATIONS OF NEGATIVE PERSONAL FEELINGS OR EXCESSIVE FAMILIARITY. ASSISTANT PROSECUTORS SHALL NEGATE THE APPEARANCE OF IMPROPRIETY AND PARTIALITY BY AVOIDING EXCESSIVE CAMARADERIE IN THEIR COURTHOUSE RELATIONS WITH DEFENSE ATTORNEYS, REMAINING AT ALL TIMES AWARE OF THEIR IMAGE AS SEEN BY THE PUBLIC AND THE POLICE.

THE PROSECUTOR SHALL ESTABLISH REGULAR COMMUNICATIONS WITH CORRECTIONAL AGENCIES FOR THE PURPOSE OF DETERMINING THE EFFECT OF HIS PRACTICES UPON CORRECTIONAL PROGRAMS. THE NEED TO MAXIMIZE THE EFFECTIVENESS OF SUCH PROGRAMS SHALL BE GIVEN SIGNIFICANT WEIGHT IN THE FORMULATION OF PRACTICES FOR THE CONDUCT OF THE PROSECUTOR FUNCTION.

THE PROSECUTOR SHALL REGULARLY INFORM THE PUBLIC ABOUT THE ACTIVITIES OF HIS OFFICE AND OF OTHER LAW ENFORCEMENT AGENCIES AND SHOULD COMMUNICATE HIS VIEWS TO THE PUBLIC ON IMPORTANT ISSUES AND PROBLEMS AFFECTING THE CRIMINAL JUSTICE SYSTEM. THE PROSECUTOR SHALL ENCOURAGE THE EXPRESSION OF VIEWS BY MEMBERS OF THE PUBLIC CONCERNING HIS OFFICE AND ACCOUNT IN DETERMINING OFFICE POLICY.

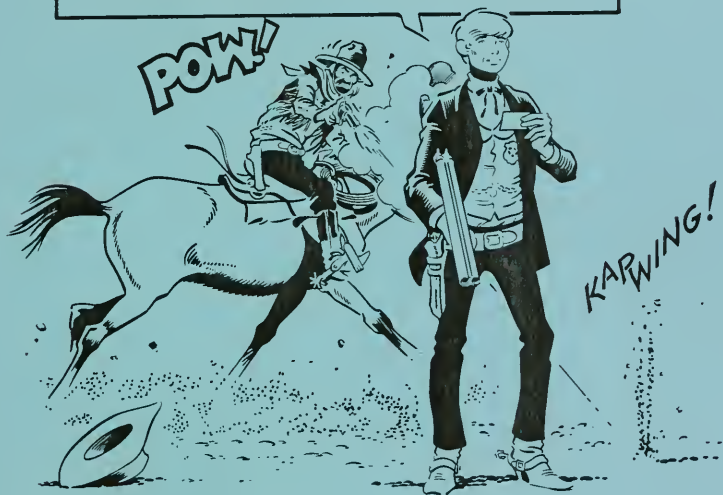
REFERENCES

N.A.C. Courts Volume, p. 289. A.B.A. Prosecutors Function, pp. 67-71.

COUNCIL ACTION: Adopted as written.

THE DEFENSE

"IF YOU CANNOT AFFORD A LAWYER
ONE WILL BE APPOINTED FOR
YOU BEFORE ANY QUESTIONING.."





THE DEFENSE

Since 1963 the state has been required to provide defense counsel for indigents accused of a crime.¹ Recently this was expanded to include most misdemeanors.² There have been a number of methods various jurisdictions have used to comply with those rulings--from fulltime, fully staffed defender offices to selection of a private attorney by the trial judge. For the defendants, obviously the best of these would be the fulltime defender. Such a defender would have his staff, his facilities and his own skills and knowledge concentrated on public defense work. All of his training would be oriented toward the defender function. There would be no conflict of interest with a private law practice and he would not fear losing other clients by defending unpopular causes.

To have such a defender project, while it would be the best for the defendant, would be completely impractical for most Montana communities. The expense would be prohibitive and the caseload insufficient. One solution, which this task force recommends is that the state organize, finance and administer all defender services. Set up on a regional or area wide basis it would be reasonably accessible, fulltime, less expensive and more equitable. Such a system would also facilitate regular training for the public defender and his staff.

¹ Gideon v. Wainwright, 372 U.S. 335 (1973).

² Argersinger v. Hamlin, 407 U.S. 25 (1972).

The program should be established so that all indigents who might require counsel could obtain it, including those already convicted, but that those who could pay some portion of the cost do so. This would reduce the burden on the taxpayer and discourage pointless prolongation of the criminal process by the defendant.

There should be provision made for some participation by private attorneys. Their skills and talents would benefit the defendants and their participation will ensure their awareness of problems within the system.

A community relations program should also be included in the project. The public defender is frequently viewed in a negative manner by the public. That can be detrimental to the project and its clients. Informing and educating the populace would at least ease some of the natural dislike many have for the defender of the accused.

AVAILABILITY OF PUBLICLY FINANCED REPRESENTATION IN CRIMINAL CASES

ADOPTED

TASK FORCE FINDINGS

Constitutionally, persons accused of a crime are entitled to a defense attorney regardless if they can provide their own or not.¹ Recently this was expanded to include any person who might be imprisoned as a result of criminal prosecution.² This means that the state must be prepared to provide defense services for any person accused for almost any criminal offense. The following standard sets guidelines for the provision of those services.

STANDARD 12.1

PUBLIC REPRESENTATION SHOULD BE MADE AVAILABLE TO ELIGIBLE DEFENDANTS (AS DEFINED IN STANDARD 12.2) IN ALL CRIMINAL CASES AT THEIR REQUEST, OR THE REQUEST OF SOMEONE ACTING FOR THEM, BEGINNING AT THE TIME THE INDIVIDUAL EITHER IS ARRESTED OR IS REQUESTED TO PARTICIPATE IN AN INVESTIGATION THAT HAS FOCUSED ON HIM AS A LIKELY SUSPECT. THE REPRESENTATION SHOULD CONTINUE DURING TRIAL COURT PROCEEDINGS AND THROUGH THE EXHAUSTION OF ALL AVENUES OF RELIEF FROM CONVICTION.

DEFENDANTS SHOULD BE DISCOURAGED FROM CONDUCTING THEIR OWN DEFENSE IN CRIMINAL PROSECUTIONS. NO DEFENDANT SHOULD BE PERMITTED TO DEFEND HIMSELF IF THERE IS BASIS FOR BELIEVING THAT:

1. THE DEFENDANT WILL NOT BE ABLE TO DEAL EFFECTIVELY WITH THE LEGAL OR FACTUAL ISSUES LIKELY TO BE RAISED;
2. THE DEFENDANTS SELF REPRESENTATION IS LIKELY TO IMPEDE THE REASONABLE EXPEDITIOUS PROCESSING OF THE CASE; OR
3. THE DEFENDANTS' CONDUCT IS LIKELY TO BE DISRUPTIVE OF THE TRIAL PROCESS.

¹ Gideon v. Wainwright, 372 U.S. 335 (1973).

² Argersinger v. Hamlin, 407 U.S. 25 (1972).

IMPLEMENTATION

As stated in Standard 12.2 defense services should be administered, financed, and organized on a statewide basis. This standard should be included in its operational procedures.

The Montana Defender Project is now providing attorney services for the inmates of the prison. This should continue with the necessary funding coming from the state and the university.

REFERENCES

N.A.C. Courts Volume, pp. 253-256, 261-262.
A.B.A. Defense Function, pp. 283-307; Trial Judge, pp. 44-45;
84-84-91; Defense Services, pp. 13-15, 37-53; Post Conviction
Remedies, pp. 49-52, 64-66, 82-84.

COUNCIL ACTION: Adopted as written.

FINANCING AND PAYMENT FOR DEFENSE SERVICES

ADOPTED

TASK FORCE FINDINGS

As part of the process of unification and standardization of the trial court system; financing, organization, and administration of defender services should be provided by the state. This will ensure, the same quality of services for the defendant regardless of the area in which he is tried, will facilitate ongoing defender training, and will relieve the less affluent counties of a financial burden.

State financing however, does not mean that the defendant should not assume some responsibility for payment for his defense. Whenever possible, some or all of the defense costs should be repayed by the defendant. The exact amount should be determined by the court upon consideration of the defendant's capabilities to make such payment.

STANDARD 12.2

FINANCING OF DEFENDER SERVICES SHALL BE PROVIDED BY THE STATE. ADMINISTRATION AND ORGANIZATION SHALL ALSO BE PROVIDED BY THE STATE, IN A MANNER CONSISTENT WITH THE NEEDS OF THE LOCAL JURISDICTION.

AN INDIVIDUAL PROVIDED SUCH REPRESENTATION SHALL BE REQUIRED TO PAY ANY PORTION OF THE COST OF THE REPRESENTATION THAT HE IS ABLE TO PAY AT THE TIME. WHERE ANY PAYMENT WOULD CAUSE SUBSTANTIAL HARDSHIP TO THE INDIVIDUAL OR HIS FAMILY, SUCH REPRESENTATION SHALL BE PROVIDED WITHOUT COST.

THE TEST FOR DETERMINING ABILITY TO PAY SHALL BE A FLEXIBLE ONE THAT CONSIDERS SUCH FACTORS AS AMOUNT OF INCOME, A CAR, OR OTHER TANGIBLE OR INTANGIBLE PROPERTY, THE NUMBER OF DEPENDANTS, AND THE COST OF SUBSISTENCE FOR THE DEFENDANT AND THOSE TO WHOM HE OWES A LEGAL DUTY OF SUPPORT. IN APPLYING THIS TEST, THE FOLLOWING CRITERIA AND QUALIFICATIONS SHALL GOVERN:

1. COUNSEL SHALL NOT BE DENIED TO ANY PERSON MERELY BECAUSE HIS FRIENDS OR RELATIVES HAVE RESOURCES ADEQUATE TO RETAIN COUNSEL OR BECAUSE HE HAS POSTED, OR IS CAPABLE OF POSTING, BOND.

2. WHETHER A PRIVATE ATTORNEY WOULD BE INTERESTED IN REPRESENTING THE DEFENDANT IN HIS PRESENT ECONOMIC CIRCUMSTANCES SHALL BE CONSIDERED.
3. THE FACT THAT AN ACCUSED ON BAIL HAS BEEN ABLE TO CONTINUE EMPLOYMENT FOLLOWING HIS ARREST SHALL NOT BE DETERMINATIVE OF HIS ABILITY TO EMPLOY PRIVATE COUNSEL.
4. THE DEFENDANT'S OWN ASSESSMENT OF HIS FINANCIAL ABILITY OR INABILITY TO OBTAIN REPRESENTATION WITHOUT SUBSTANTIAL HARDSHIP TO HIMSELF OF HIS FAMILY SHALL BE CONSIDERED.

IMPLEMENTATION

Legislation required.

REFERENCES

N.A.C. Courts Volume, pp. 257-258, 265-266;
A.B.A. Defense Function, pp. 17-19, 40-46, 53-56, 58-59.

COUNCIL ACTION: Adopted as written.

INITIAL CONTACT WITH CLIENT

ADOPTED

TASK FORCE FINDINGS

There should be a positive approach to providing defense services. Potential clients should have immediate and direct access to such services. Other persons, besides officials, should be able to request assistance for an accused. Further, steps should be taken to identify those who may need the assistance of the public defender and such assistance should be made available.

STANDARD 12.3

THE FIRST CLIENT CONTACT AND INITIAL INTERVIEW BY THE PUBLIC DEFENDER, HIS ATTORNEY STAFF, OR APPOINTED COUNSEL SHALL BE GOVERNED BY THE FOLLOWING:

1. THE ACCUSED, OR A RELATIVE, CLOSE FRIEND, OR OTHER RESPONSIBLE PERSON ACTING FOR HIM, MAY REQUEST REPRESENTATION AT ANY STAGE OF ANY CRIMINAL PROCEEDINGS. PROCEDURES SHALL EXIST WHEREBY THE ACCUSED IS INFORMED OF THIS RIGHT AND OF THE METHOD OF EXERCISING IT. UPON SUCH REQUEST, THE PUBLIC DEFENDER OR APPOINTED COUNSEL SHALL CONTACT THE INTERVIEWEE.
2. IF, AT THE INITIAL APPEARANCE, NO REQUEST FOR PUBLICLY PROVIDED DEFENSE SERVICES HAS BEEN MADE, AND IT APPEARS TO THE JUDICIAL OFFICER THAT THE ACCUSED HAS NOT MADE AN INFORMED WAIVER OF COUNSEL AND IS ELIGIBLE FOR PUBLIC REPRESENTATION, AN ORDER SHALL BE ENTERED BY THE JUDICIAL OFFICER REFERRING THE CASE TO THE PUBLIC DEFENDER, OR TO APPOINTED COUNSEL. THE PUBLIC DEFENDER OR APPOINTED COUNSEL SHALL CONTACT THE ACCUSED AS SOON AS POSSIBLE FOLLOWING ENTRY OF SUCH AN ORDER.
3. WHERE, PURSUANT TO COURT ORDER OR A REQUEST, BY OR ON BEHALF OF AN ACCUSED, A PUBLICLY PROVIDED ATTORNEY INTERVIEWS AN ACCUSED AND IT APPEARS THAT THE ACCUSED IS FINANCIALLY INELIGIBLE FOR PUBLIC DEFENDER SERVICES, THE ATTORNEY SHALL HELP THE ACCUSED OBTAIN COMPETENT PRIVATE COUNSEL IN ACCORDANCE WITH ESTABLISHED BAR PROCEDURES AND SHALL CONTINUE TO RENDER ALL NECESSARY PUBLIC DEFENDER SERVICES UNTIL PRIVATE COUNSEL ASSUMES RESPONSIBILITY FOR FULL REPRESENTATION OF THE ACCUSED.

IMPLEMENTATION

This standard should be included in the policies of the proposed statewide defenders office.

REFERENCES

N.A.C. Courts Volume pp. 259-260.
A.B.A. Defense Services pp. 43-46, 59-64;
Pretrial Release pp. 43-44.

COUNCIL ACTION: Adopted as written.

DEFENDER TO BE FULL TIME AND ADEQUATELY COMPENSATED

**AMENDED
ADOPTED**TASK FORCE FINDINGS

There is a danger that a part-time public defender will neglect or slight his public cases in favor of his private practice. He may even be forced to, if the compensation he receives as a public defender is inadequate. There is also the potential for a conflict of interest between his public and private practice of law.

A full-time defender would not be susceptible to these problems. However, he must then be paid on a scale reasonably close to what he could make in private practice. Otherwise, it would be nearly impossible to attract and hold qualified attorneys. Since the office of the public defender is on the level with the prosecutor and the district court judge, he should, for salary purposes, be treated in a similar manner. His facilities and resources should also be sufficient. It would be pointless to hire a person to do a job without including the necessary tools. It would also be unfair to those he must defend.

STANDARD 12.4

THE OFFICE OF PUBLIC DEFENDER SHALL BE A FULL-TIME OCCUPATION. STATE OR LOCAL UNITS OF GOVERNMENT SHALL CREATE REGIONAL PUBLIC DEFENDERS SERVING MORE THAN ONE LOCAL UNIT OF GOVERNMENT, IF THIS IS NECESSARY TO CREATE A CASELOAD OF SUFFICIENT SIZE TO JUSTIFY A FULL-TIME PUBLIC DEFENDER. THE PUBLIC DEFENDER SHALL BE COMPENSATED BY THE STATE AT A RATE COMPARABLE TO THAT OF THE PRESIDING JUDGE OF THE TRIAL COURT OF GENERAL JURISDICTION. THE PUBLIC DEFENDER SHALL ALSO HAVE ADEQUATE SUPPORTIVE SERVICES INCLUDING SECRETARIAL, INVESTIGATION, AND SOCIAL WORK ASSISTANCE.

IMPLEMENTATION

Legislation required.

REFERENCES

N.A.C. Courts Volume pp. 267, 280-281.
A.B.A. Defense Services pp. 22-24, 34-37.

COUNCIL ACTION:

It was decided by the council that the wage compensation of the public defender should be paid by the state and that there should be some leeway in determining the salary. For this purpose the words "by the state" and "comparable to that" were inserted into the standard on lines 8 and 9. With these amendments the standard was adopted.

PERFORMANCE OF PUBLIC DEFENDER FUNCTION

ADOPTED

TASK FORCE FINDINGS

The role of the public defender is a difficult one and subject to pressure from many directions, including from within. As the one responsible for protecting those charged with crimes, the more diligently he discharges his duties the less likely he is to win the approval of the public. Law enforcement agencies and the prosecutor, both of whom he must deal with constantly, have goals which normally are in direct opposition to his own. Even he must question, from time to time, the possible consequences of his efforts especially if the crime involved is a heinous one. However, the adversarial nature of our trial system makes a necessity of his office.

It also requires that he operate as free from external pressure as possible. That means that he must have primary control over his office and its operations. He should exercise that control in a manner which will provide the respect and support of the prosecution, law enforcement, and the public.

STANDARD 12.5

POLICY SHOULD BE ESTABLISHED FOR, AND SUPERVISION MAINTAINED OVER, A DEFENDER OFFICE BY THE PUBLIC DEFENDER. IT SHOULD BE THE RESPONSIBILITY OF THE PUBLIC DEFENDER TO INSURE THAT THE DUTIES OF THE OFFICE ARE DISCHARGED WITH DILIGENCE AND COMPETENCE.

THE PUBLIC DEFENDER SHOULD SEEK TO MAINTAIN HIS OFFICE AND THE PERFORMANCE OF ITS FUNCTION FREE FROM POLITICAL PRESSURES THAT MAY INTERFERE WITH HIS ABILITY TO PROVIDE EFFECTIVE DEFENSE SERVICES. HE SHOULD ASSUME A ROLE OF LEADERSHIP IN THE GENERAL COMMUNITY, EXPLAINING HIS FUNCTION TO THE PUBLIC AND SEEKING TO HOLD AND MAINTAIN SUPPORT OF AND RESPECT FOR THIS FUNCTION.

THE RELATIONSHIP BETWEEN THE LAW ENFORCEMENT COMPONENT OF THE CRIMINAL JUSTICE SYSTEM AND THE PUBLIC DEFENDER SHOULD BE CHARACTERIZED BY PROFESSIONALISM, MUTUAL RESPECT, AND INTEGRITY. IT SHOULD NOT BE CHARACTERIZED BY DEMONSTRATIONS OF NEGATIVE PERSONAL FEELINGS ON ONE HAND OR EXCESSIVE FAMILIARITY ON THE OTHER.

SPECIFICALLY, THE FOLLOWING GUIDELINES SHOULD BE FOLLOWED:

1. THE RELATIONS BETWEEN PUBLIC DEFENDER ATTORNEYS AND PROSECUTION ATTORNEYS SHOULD BE ON THE SAME HIGH LEVEL OF PROFESSIONALISM THAT IS EXPECTED BETWEEN MEMBERS OF THE BAR IN OTHER SITUATIONS.
2. THE PUBLIC DEFENDER MUST NEGATE THE APPEARANCE OF IMPROPRIETY BY AVOIDING EXCESSIVE AND UNNECESSARY COMRADERY IN AND AROUND THE COURTHOUSE AND IN HIS RELATIONS WITH LAW ENFORCEMENT OFFICIALS, REMAINING AT ALL TIMES AWARE OF HIS IMAGE AS SEEN BY HIS CLIENT COMMUNITY.
3. THE PUBLIC DEFENDER SHOULD BE PREPARED TO TAKE POSITIVE ACTION, WHEN INVITED TO DO SO, TO ASSIST THE POLICE AND OTHER LAW ENFORCEMENT COMPONENTS IN UNDERSTANDING AND DEVELOPING THEIR PROPER ROLES IN THE CRIMINAL JUSTICE SYSTEM, AND TO ASSIST THEM IN DEVELOPING THEIR OWN PROFESSIONALISM. IN THE COURSE OF THIS EDUCATIONAL PROCESS HE SHOULD ASSIST IN RESOLVING POSSIBLE AREAS OF MISUNDERSTANDING.
4. HE SHOULD MAINTAIN A CLOSE PROFESSIONAL RELATIONSHIP WITH HIS FELLOW MEMBERS OF THE LEGAL COMMUNITY AND ORGANIZED BAR, KEEPING IN MIND AT ALL TIMES THAT THIS GROUP OFFERS THE MOST POTENTIAL SUPPORT FOR HIS OFFICE IN THE COMMUNITY AND THAT, IN THE FINAL ANALYSIS, HE IS ONE OF THEM. SPECIFICALLY:
 - a. HE MUST BE AWARE OF THEIR POTENTIAL CONCERN THAT HE WILL PREEMPT THE FIELD OF CRIMINAL LAW, ACCEPTING AS CLIENTS ALL ACCUSED PERSONS WITHOUT REGARD TO THEIR ABILITY OR WILLINGNESS TO RETAIN PRIVATE COUNSEL. HE MUST AVOID BOTH THE APPEARANCE AND FACT OF COMPETING WITH THE PRIVATE BAR.
 - b. HE MUST, WHILE IN NO WAY COMPROMISING HIS REPRESENTATION OF HIS OWN CLIENTS, REMAIN SENSITIVE TO THE CALENDARING PROBLEMS THAT BESET CIVIL CASES AS A RESULT OF CRIMINAL CASE OVERLOADS, AND COOPERATE IN RESOLVING THESE.
 - c. HE MUST MAINTAIN THE BAR'S FAITH IN THE DEFENDER SYSTEM BY AFFORDING VIGOROUS AND EFFECTIVE REPRESENTATION TO HIS OWN CLIENTS.
 - d. HE MUST MAINTAIN DIALOGUE BETWEEN HIS OFFICE AND THE PRIVATE BAR, NEVER FORGETTING THAT THE BAR, MORE THAN ANY OTHER GROUP, HAS THE POTENTIAL TO ASSIST IN KEEPING HIS OFFICE FREE FROM THE EFFECTS OF POLITICAL PRESSURES AND INFLUENCES.

IMPLEMENTATION

This standard should be incorporated into the policies and guidelines of the proposed state Defender Program.

REFERENCES

N.A.C. Courts Volume, pp. 270-273.
A.B.A. Defense Services, pp. 34-36.

COUNCIL ACTION: Adopted as written.

PROVIDING ASSIGNED COUNSEL

AMENDED
ADOPTEDTASK FORCE FINDINGS

The defense of indigents should not be the sole prerogative of the defender's office. While he is the logical one for the initial contact and will normally handle most cases, private attorneys should also participate. This will involve the members of the bar more deeply in the criminal justice system, making them aware of its problems, and more likely to support reforms. In addition, it will give the defender's office a wide variety of skills and expertise upon which to draw.

Care should be taken that this private participation be a cooperative venture between the public defender and private attorneys rather than a competitive one.

STANDARD 12.6

SERVICES OF A FULL-TIME PUBLIC DEFENDER ORGANIZATION, AND A COORDINATED ASSIGNED COUNSEL SYSTEM INVOLVING SUBSTANTIAL PARTICIPATION OF THE PRIVATE BAR, SHALL BE AVAILABLE IN EACH JURISDICTION TO SUPPLY ATTORNEY SERVICES TO INDIGENTS ACCUSED OF CRIMES.

THE PUBLIC DEFENDER OFFICE SHALL, WHERE POSSIBLE, HAVE RESPONSIBILITY FOR COMPILING AND MAINTAINING A PANEL OF ATTORNEYS FROM WHICH A TRIAL JUDGE MAY SELECT AN ATTORNEY TO APPOINT TO A PARTICULAR DEFENDANT. THE TRIAL COURT SHOULD HAVE THE RIGHT TO ADD TO THE PANEL ATTORNEYS NOT PLACED ON IT BY THE PUBLIC DEFENDER. THE PUBLIC DEFENDER'S OFFICE ALSO SHOULD PROVIDE INITIAL AND INSERVICE TRAINING TO LAWYERS ON THE PANEL AND SUPPORT SERVICES FOR APPOINTED LAWYERS, AND IT SHOULD MONITOR THE PERFORMANCE OF APPOINTED ATTORNEYS.

IMPLEMENTATION

To be included in the proposed State Defender Program.

REFERENCES

N.A.C. Courts Volume, pp. 263-264, 282-283.
A.B.A. Defense Services, pp. 15-17, 24-29; Defense Function, pp. 186-190.

COUNCIL ACTION:

Adopted as amended. The words "where possible" were inserted in the first line of the second paragraph for clarity.

COMMUNITY RELATIONS

ADOPTED

TASK FORCE FINDINGS

It is difficult for the average person to consider the role of the public defender from a rational and unprejudiced viewpoint. Rather than seeing him as a defender of persons who may be innocent, the law-abiding citizen frequently tends to consider him to be the protector of the guilty. This reaction has been heightened by many of the "cop" shows on T.V., whose portrayal of defense attorneys are usually uncomplimentary to say the least. Unfortunately, it has also been heightened by many defense attorneys themselves. In the past few years, many of those attorneys who have been drawn to defense work have been flamboyant or antiestablishment types who actively seek controversy and whose manners and methods are irritating and antagonizing to the average citizen. The public defender's clients also tend to look upon him with some distrust for some of the above reasons. Because he is a part of the system, his efforts on their behalf, especially in plea negotiations, may appear to be simple railroading, and he is frequently on the losing side.

It would be virtually impossible for a public defender to completely overcome this negative reaction of his clients and the community. However, it can seriously affect his performance and those he must protect. So he should make every effort to reduce it to a minimum.

STANDARD 12.7

THE PUBLIC DEFENDER SHOULD BE SENSITIVE TO ALL OF THE PROBLEMS OF HIS CLIENT COMMUNITY. HE SHOULD BE PARTICULARLY SENSITIVE TO THE DIFFICULTY OFTEN EXPERIENCED BY THE MEMBERS OF THAT COMMUNITY IN UNDERSTANDING HIS ROLE. IN RESPONSE:

1. HE SHOULD SEEK, BY ALL POSSIBLE AND ETHICAL MEANS, TO INTERPRET THE PROCESS OF PLEA NEGOTIATION AND THE PUBLIC DEFENDER'S ROLE IN IT TO THE CLIENT COMMUNITY.
2. HE SHOULD BE AVAILABLE TO SCHOOLS AND ORGANIZATIONS TO EDUCATE MEMBERS OF THE COMMUNITY AS TO THEIR RIGHTS AND DUTIES RELATED TO CRIMINAL JUSTICE.

IMPLEMENTATION

To be implemented by the individual, public defenders.

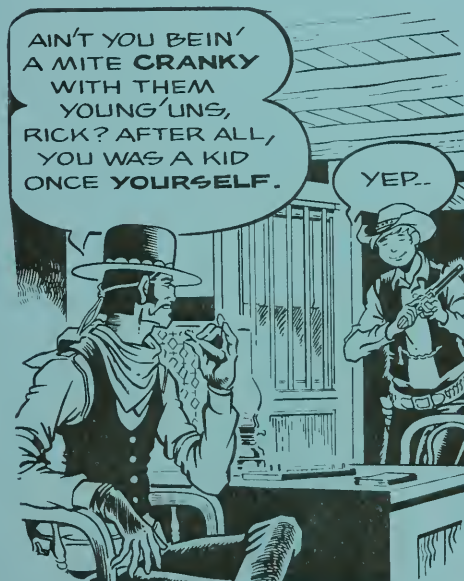
REFERENCES

N.A.C. Courts Volume p. 195:
A.B.A. Defense Services p. 37.

COUNCIL ACTION: Adopted as written.



JUVENILES



JUVENILES

Probably the best approach to deal with a problem is to attack it before it becomes too serious. This is particularly true when the problem you have to deal with is crime. When a man is, in fact, a criminal his attitudes, habits, and life patterns have been set. It is extremely difficult at that point to change his direction. Most persons in the criminal justice field realize this, which is why a great deal of effort is being concentrated on the juvenile offender. The advantages are obvious. A juvenile is impressionable and to an extent still malleable. His crimes are usually minor ones so his record is not a handicap. His contact with hardened criminals has usually been minimal, at least in comparison to what he would face in prison. It is also a more economical approach since it costs more to treat a man while holding him in prison than it does to treat him on the outside.

The Courts Task Force endorses this approach to crime control. We are concerned with the increase in crime among juveniles and the fact that the age of the offender seems to be getting younger. We do not feel that adult offender programs should be neglected. In some cases they have proven effective and every means possible should be used to prevent the rise in crime. The primary effort however should be aimed at the juvenile offender.

specific topics that the task force discussed were: court jurisdiction over juveniles; intake, detention and shelter care in delinquency cases; processing certain delinquency cases as adult criminal prosecutions; adjudicatory hearings in delinquency cases; and dispositional hearings in delinquency cases. Since all of these topics were more than adequately covered by the Montana Youth Court Act, on recommendation of the Montana Probation Officer Association, the task force has decided to endorse the portions of the act which pertain to those topics.

COURTS TASK FORCE ENDORSEMENTS

COURT JURISDICTION OVER JUVENILES

See Montana Youth Court Act 10-1206, Jurisdiction of the Court.

INTAKE, DETENTION, AND SHELTER CARE IN DELINQUENCY CASES

See Montana Youth Court Act 10-1209, Intake Procedure;
10-1210, Consent Adjustment Without Petition;
10-1211, Taking Into Custody;
10-1212, Detention of Youth;
10-1213, Release or Delivery from Custody;
10-1214, Place of Detention.

PROCESSING CERTAIN DELINQUENCY CASES AS ADULT CRIMINAL PROSECUTIONS

See Montana Youth Court Act 10-1229, Transfer to Criminal Court

ADJUDICATORY HEARING IN DELINQUENCY CASES

See Montana Youth Court Act 10-1220, Adjudicatory Hearing

DISPOSITIONAL HEARINGS IN DELINQUENCY CASES

See Montana Youth Court Act 10-1221, Dispositional Hearing

REFERENCES

See appendix for Youth Court Act Sections

JUVENILE STATUS OFFENDERS

In Standard 1.4, Juvenile Status Offenders, of the Corrections Task Force Report, it was recommended that such offenders be dealt with outside the juvenile justice system. We do not disagree with this entirely, however, we feel that:

1. Juvenile status offenders must be dealt with thoroughly and promptly. These status offenses are frequently precursors to more serious offenses.
2. The agency that deals with them must have sufficient resources and authority to handle them properly.

We doubt that the Department of Social and Rehabilitation Services as it now exists, has these resources or the authority. More study should be done on the juvenile problem including status offenders. Consideration should be given to the formation of a new task force specifically for this purpose.

MISC.

RECOMMENDATIONS

COUNCIL ACTION

CHAPTER 14

The Courts Task Force original Chapter 14 dealt with Crime Victim Compensation. This chapter was removed from the Courts Task Force Report for failure to comply with format, but will be reconsidered for insertion into the Council Report.

STATEWIDE INVESTIGATION AND PROSECUTION

ADOPTEDTASK FORCE FINDINGS

Montana is a very large, sparsely populated state with most of the population located in small towns. The result as far as law enforcement goes is many small enforcement agencies with limited personnel and resources and large jurisdictions. To compound the problem we have no state police as such since the Highway Patrol's jurisdiction in effect ends where the pavement stops. The attorney generals office is severely limited in jurisdiction and manpower and our county attorneys are generally part time with only one or two man offices.

All of this means that the investigation and prosecution of any more than street level crime is severely hampered. We are extremely susceptible to, and currently experiencing, many forms of white collar and organized crime which is multicounty or statewide in scope. The Workmens Compensation scandal for instance and, in the private sector, business opportunity frauds, narcotics, fencing and the like.

To correct this situation we need an agency with sufficient authority and resources to investigate statewide. Logically that agency should be the office of the attorney general since he is the chief law enforcement officer in the state and has some statewide jurisdiction.

STANDARD 14.1

THE OFFICE OF THE ATTORNEY GENERAL SHOULD HAVE THE AUTHORITY AND ADEQUATE PERSONNEL TO INVESTIGATE AND PROSECUTE CRIMINAL ACTIVITY OCCURRING IN A MULTI-COUNTY OR STATEWIDE AREA, WHICH BECAUSE OF IT'S SCOPE IS NOT READILY SUSCEPTIBLE TO LOCAL INVESTIGATION OR PROSECUTION.

IMPLEMENTATION

Legislation required.

COUNCIL ACTION: Adopted as written.

AUTOMATED LEGAL RESEARCH

ADOPTED

TASK FORCE FINDINGS

The Information Systems Task Force has recommended in Standard 3.7 that automated legal research facilities be considered for this state. Recent developments in this field have made possible systems which appear to be economically feasible for Montana and we wish to lend our support to the recommendation of the Information Systems Task Force. We feel such a system would prove to be a tremendous asset to our judicial process and the improvement in speed and quality would easily offset any reasonable expenditure.

STANDARD 14.2

AUTOMATED LEGAL RESEARCH SERVICES SHOULD BE MADE AVAILABLE TO JUDGES, PROSECUTORS, AND DEFENSE ATTORNEYS ON AN EXPERIMENTAL BASIS IN THOSE JURISDICTIONS WHERE THERE IS AVAILABLE A FULL-TEXT DATA BANK OF ALL STATUTES AND DECISIONS AND WHERE THE SERVICE PROVIDES INTERACTIVE TERMINALS.

THE DATA BANK NECESSARY FOR SUCH SERVICES SHOULD BE DEVELOPED BY A PUBLIC AGENCY OR A REGULATED OR SUPERVISED PRIVATE ENTITY.

IMPLEMENTATION

See Information Systems Task Force Standard 3.7.

REFERENCES

N.A.C. Courts Volume pp. 222-224;
Information Systems Task Force Report, Standard 3.7.

COUNCIL ACTION: Adopted as written.

REJECTED

Vacancies which occur in the office of justice of the peace are now filled by appointment by the county commissioners. I do not feel this is an adequate method of filling such an important position and submit the following standard as an acceptable alternative.

STANDARD

VACANCIES IN THE OFFICE OF JUSTICE OF THE PEACE WILL BE FILLED BY A LOCAL APPOINTMENT COMMISSION.

THIS COMMISSION SHALL BE COMPOSED OF THE SENIOR DISTRICT COURT JUDGE OR A PERSON APPOINTED BY HIM, ONE MEMBER APPOINTED BY THE LOCAL GOVERNING BODY, AND ONE MEMBER APPOINTED BY THE OTHER TWO AFORESAID MEMBERS.

THIS COMMISSION WILL CHOOSE FROM AMONG THE LIST OF APPLICANTS, THE PERSON BEST QUALIFIED FOR THE POSITION.

ALL APPLICANTS WILL BE GIVEN EQUAL OPPORTUNITY AND CONSIDERATION BY THE COMMISSION. THE PERSON SO APPOINTED SHALL SERVE UNTIL THE NEXT GENERAL ELECTION, AT WHICH TIME A JUSTICE OF THE PEACE SHALL BE ELECTED TO FILL THE REMAINDER OF THE ORIGINAL TERM.

BARBARA EVANS, Courts Task Force Member

COUNCIL ACTION:

The council rejected this as a standard.

APPENDIXES

APPENDIX A

COURT JURISDICTION OVER JUVENILES

10-1206. Jurisdiction of the Court.

- (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, or concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.
- (2) Justice, municipal and police courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth except that the following alleged violations are under the exclusive jurisdiction of the court:
 - (a) driving while intoxicated as defined in section 32-1202, R.C.M. 1947;
 - (b) failing to stop at an accident as defined in section 32-1202, R.C.M. 1947; and
 - (c) driving without a valid license or permit as defined in sections 31-125 and 31-127, R.C.M. 1947, after having been previously convicted of the same offense.

HISTORY: En. 10-1206 by Sec. 6, CH. 329, L. 1974.

APPENDIX B

INTAKE, DETENTION, AND SHELTER CARE IN DELINQUENCY CASES

10-1209. Intake procedure.

- (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.
- (2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.
- (3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.
- (4) The probation officer in the conduct of the preliminary inquire shall;
 - (a) advise the youth of the youth's rights under this act and the constitutions of the State of Montana and the United States;
 - (b) determine whether the matter is within the jurisdiction of the court;
 - (c) determine, if the youth is in detention or custody, whether such detention or custody should be continued. Once, relevant information is secured, the probation officer shall:
 - (d) determine whether the interest of the public or the youth requires that further action be taken;
 - (e) terminate the inquiry upon the determination that no further action be taken;
 - (f) release the youth immediately upon the determination that the filing of a petition is not authorized.
- (5) The probation officer upon determining that further action is required may:

- (a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;
 - (b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;
 - (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.
- (6) A petition charging a youth held in custody or detention must be filed within five (5) working days from the date the youth was first confined or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.
- (7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

HISTORY: En. 10-1209 by Sec. 9, Ch. 329, L. 1974

10-1210. Consent adjustment without petition.

- (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:
- (a) the admitted facts bring the case within the jurisdiction of the court;
 - (b) counsel and advice without filing a petition would be in the best interests of the child and the public.

- (2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:
- (a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person having legal custody of the youth.
 - (b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been or will be in any way detained.
- (3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.
- (4) The following dispositions may be imposed by informal adjustment:
- (a) Probation;
 - (b) Placement of the youth in a licensed foster home or other home approved by the court;
 - (c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;
 - (d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a detention facility as defined by this act and such commitment shall not exceed a period of six (6) months without a subsequent order of the court, after notice and hearing.

HISTORY: En. 10-1210 by Sec. 10, Ch. 329, L. 1974

10-1211. Taking into custody.

- (1) A youth may be taken into custody under the following circumstances:
- (a) by a law enforcement officer pursuant to a lawful order or process of any court;

- (b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;
 - (c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.
- (2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

HISTORY: En. 10-1211 by Sec. 11, Ch. 329, L. 1974

10-1212. Detention of youth.

A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court; he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.

HISTORY: En. 10-1212 by Sec. 12, Ch. 329, L. 1974.

10-1213. Release or delivery from custody.

- (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.
- (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.

- (3) Whenever any peace officer has apprehended a youth, he shall immediately notify the probation officer of such fact and shall, as soon as practicable, provide the probation officer with a written report of his reasons for the apprehension.

HISTORY: En. 10-1213 by Sec. 13, Ch. 329, L. 1974.

10-1214. Place of detention.

- (1) A youth alleged to be a delinquent youth or youth in need of supervision may be detained only in:
- (a) a licensed foster home or a home approved by the court;
 - (b) a facility operated by a licensed child welfare agency;
 - (c) a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court; or
 - (d) a detention facility;
 - (e) any other suitable place or facility, designated or operated by the court. The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (c) or (d) is not available; the detention is in an area separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; the facilities specified in subsection (a) or (b) are not sufficient; and the court so orders.
- (2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.
- (3) A youth alleged to be in need of care shall be placed only in the facilities states in subsections (a) and (b) of subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.

HISTORY: En. 10-1214 by Sec. 14, Ch. 329, L. 1974

PROCESSING CERTAIN DELINQUENCY CASES AS ADULT CRIMINAL PROSECUTORS

10-1229. Transfer to criminal court.

- (1) After a petition has been filed alleging delinquency the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:
 - (a) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:
 - (i) criminal homicide as defined in section 94-5-101, R.C.M. 1947;
 - (ii) arson as defined in section 94-6-104, R.C.M. 1947;
 - (iii) aggravated assault as defined in section 94-5-202, R.C.M. 1947;
 - (iv) robbery as defined in section 94-5-401, R.C.M. 1947;
 - (v) burglary or aggravated burglary as defined in section 94-6-204, R.C.M. 1947;
 - (vi) sexual intercourse without consent as defined in section 94-5-503, R.C.M. 1947;
 - (vii) aggravated kidnaping as defined in section 94-5-303, R.C.M. 1947;
 - (viii) possession of explosives as defined in section 94-6-105, R.C.M. 1947;
 - (ix) criminal sale of dangerous drugs for profit as included in section 54-132, R.C.M. 1947.
 - (b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; and
 - (c) notice in writing of the time, place and purpose of hearing is given to the youth, his counsel, and his parents, guardian or custodian at least ten (10) days before the hearing; and

- (d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:
 - (i) the youth committed the delinquent act alleged; and
 - (ii) the seriousness of the offense and the protection of the community requires treatment of the youth beyond that afforded by juvenile facilities; and
 - (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- (2) In transferring the matter of prosecution to the district court the court shall also consider the following factors:
 - (a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;
 - (b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation and prior commitments to juvenile institutions;
 - (c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the youth court.
- (3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.
- (4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.
- (5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.
- (6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (2) (a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it deems proper.

HISTORY: En. 10-1229 by Sec. 29, Ch. 329, L. 1974.

ADJUDICATORY HEARING IN DELINQUENCY CASES

10-1220. Adjudicatory hearing.

- (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses; in the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearings shall be set forthwith and accorded a preferential priority.
- (2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses; if the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.
- (3) An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate.
- (4) The youth charged in a petition must be present at the hearing and if brought from detention to the hearing, shall not appear clothed in institutional clothing.
- (5) In a hearing on a petition under this section, the general public shall be excluded and only such persons admitted as have a direct interest in the case; except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, shall not be excluded from the hearing.
- (6) If the court finds on the basis of a valid admission by a youth of the allegations of the petition or if a youth is found to be a delinquent youth or a youth in need of supervision the court shall schedule a dispositional hearing under this act.

- (7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3.

HISTORY: En. 10-1220 by Sec. 20, Ch. 329, L. 1974.

DISPOSITIONAL HEARINGS IN DELINQUENCY CASES

10-1221. Dispositional hearing.

- (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.
- (2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross examine said parties at the dispositional hearing.
- (3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.
- (4) The dispositional hearing shall be conducted in the manner set forth in section 10-1220, subsections (3), (4), and (5). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.
- (5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

HISTORY: En. 10-1221 by Sec. 21, Ch. 329, L. 1974.

